48-1-.5. Scope of chapter.

Until this chapter is repealed January 1, 2016, this chapter applies only to a partnership formed on or before December 31, 2013, that has not elected to be governed by Chapter 1d, Utah Uniform Partnership Act, as provided in Section 48-1d-1405.

Enacted by Chapter 412, 2013 General Session

48-1-1. Definition of terms.

As used in this chapter:

(1) "Bankrupt" includes "bankrupt" under the federal bankruptcy laws or "insolvent" under any state insolvency law.

(2) "Business" includes every trade, occupation, or profession.

(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(4) "Court" includes every court and judge having jurisdiction in the case.

(5) "Limited liability partnership" means a general partnership:

(a) registered under Section 48-1-42; and

(b) complying with Section 48-1-43.

(6) "Person" includes:

(a) an individual;

(b) a partnership;

(c) a limited liability company;

(d) a limited liability partnership;

(e) a corporation; or

(f) another association.

(7) "Real property" includes land and any interest or estate in land.

(8) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(9) "Tribal limited liability partnership" means a limited liability partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

Amended by Chapter 249, 2008 General Session

48-1-2. Interpretation of knowledge and notice.

(1) Within the meaning of this chapter, a person is deemed to have knowledge of a fact not only when he has actual knowledge thereof, but also when he has knowledge of such other facts that to act in disregard of them shows bad faith.

(2) A person has notice of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail, or by other means of communication, a written statement of the fact to such person, or to a proper person at his place of business or residence.

No Change Since 1953

48-1-3. "Partnership" defined.

(1) (a) Except as provided in Subsection (2), a "partnership" is an association of two or more persons to carry on as coowners a business for profit.

(b) "Partnership," when used in a statute of the state, includes a limited liability partnership registered under Section 48-1-42, unless the context requires otherwise.

(2) An association formed under any other statute of this state, or any statute adopted by authority other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter.

(3) This chapter shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

Amended by Chapter 340, 2011 General Session

48-1-3.1. Joint venture defined -- Application of chapter.

(1) A joint venture is an association of two or more persons to carry on as co-owners of a single business enterprise.

(2) This chapter governs the property and transfer rights of joint ventures.

Enacted by Chapter 14, 1985 General Session

48-1-4. Rules for determining the existence of a partnership.

In determining whether a partnership exists these rules shall apply:

(1) Except as provided by Section 48-1-13, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise.

(b) As wages of an employee or rent to a landlord.

(c) As an annuity to a widow or representative of a deceased partner.

(d) As interest on a loan, though the amounts of payment vary with the profits of the business.

(e) As the consideration for the sale of the good will of a business or other property by installments or otherwise.

No Change Since 1953

48-1-5. Partnership property.

All property originally brought into the partnership stock, or subsequently acquired by purchase or otherwise on account of the partnership, is partnership property.

Unless the contrary intention appears, property acquired with partnership funds is partnership property.

Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor, unless a contrary intent appears.

No Change Since 1953

48-1-6. Partner agent of partnership as to partnership business.

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership, unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all of the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.

(b) Dispose of the good will of the business.

(c) Do any other act which would make it impossible to carry on the ordinary business of the partnership.

(d) Confess a judgment.

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

No Change Since 1953

48-1-7. Conveyance of real property of partnership.

Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property, unless the partner's act binds the partnership under the provisions of Section 48-1-6(1), or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner in making the conveyance has exceeded his authority.

Where title to real property is in the name of the partnership a conveyance executed by a partner in his own name passes the equitable interest of the partnership,

provided the act is one within the authority of the partner under the provisions of Section 48-1-6(1).

Where title to real property is in the name of one or more but not all of the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property, if the partners' act does not bind the partnership under the provisions of Section 48-1-6(1), unless the purchaser or his assignee is a holder for value without knowledge.

Where the title to real property is in the name of one or more or all of the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of Section 48-1-6(1).

Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

No Change Since 1953

48-1-8. Partnership bound by admission of partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

No Change Since 1953

48-1-9. Partnership charged with knowledge of or notice to partner.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operates as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

No Change Since 1953

48-1-10. Partnership bound by partner's wrongful act.

Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

No Change Since 1953

48-1-11. Partnership bound by partner's breach of trust.

The partnership is bound to make good the loss:

(1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and,

(2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

No Change Since 1953

48-1-12. Nature of partner's liability.

(1) Except as provided in Subsection (2), all partners are liable:

(a) jointly and severally for everything chargeable to the partnership under Sections 48-1-10 and 48-1-11.

(b) jointly for all other debts and obligations of the partnership, except a partner may enter into a separate obligation to perform a partnership contract.

(2) (a) A partner in a limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution or otherwise, for a debt, obligation, or liability chargeable to the partnership arising from negligence, wrongful acts, or misconduct committed while the partnership is registered as a limited liability partnership and in the course of the partnership business by another partner, or an employee, agent, or representative of the limited liability partnership.

(b) Notwithstanding Subsection (2)(a), a partner in a limited liability partnership is liable for his own negligence, wrongful acts, or misconduct.

Amended by Chapter 61, 1994 General Session

48-1-13. Partner by estoppel.

(1) When a person by words spoken or written or by conduct represents himself, or consents to another's representing him, to anyone as a partner, in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation given credit to the actual or apparent partnership, and, if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by, or with the knowledge of, the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as if he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability; otherwise, separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of an existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the

joint act or obligation of the person acting and the persons consenting to the representation.

No Change Since 1953

48-1-14. Liability of incoming partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as if he had been a partner when such obligations were incurred, except that his liability shall be satisfied only out of partnership property.

No Change Since 1953

48-1-15. Rules determining rights and duties of partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and, except as provided in Subsection 48-1-12(2), must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Amended by Chapter 61, 1994 General Session

48-1-16. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at

all times have access to and may inspect and copy any of them.

No Change Since 1953

48-1-17. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner, or the legal representatives of any deceased partner, or partner under legal disability.

No Change Since 1953

48-1-18. Partner accountable as a fiduciary.

Every partner must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

No Change Since 1953

48-1-19. Right to an account.

Any partner shall have the right to a formal account as to partnership affairs:

(1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners.

(2) If the right exists under the terms of any agreement.

(3) As provided by Section 48-1-18.

(4) Whenever other circumstances render it just and reasonable.

No Change Since 1953

48-1-20. Continuation of partnership beyond fixed term.

When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination so far as is consistent with a partnership at will.

A continuation of the business by the partners, or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

No Change Since 1953

48-1-21. Extent of property rights of a partner.

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership and (3) his right to participate in the management.

No Change Since 1953

48-1-22. Nature of a partner's right in specific partnership property.

(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable, except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representative of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representatives. Such surviving partner or partners, or the legal representatives of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin.

No Change Since 1953

48-1-23. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

No Change Since 1953

48-1-24. Assignment of partner's interest.

A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

In case of a dissolution of a partnership, the assignee is entitled to receive his assignor's interest, and may require an account from the date only of the last account agreed to by all the partners.

No Change Since 1953

48-1-25. Partner's interest subject to charging order.

(1) On due application to a competent court by any judgment creditor of a partner the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or,

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

No Change Since 1953

48-1-26. "Dissolution" defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

No Change Since 1953

48-1-27. Partnership not terminated by dissolution.

On dissolution a partnership is not terminated, but continues until the winding up of partnership affairs is completed.

No Change Since 1953

48-1-28. Causes of dissolution.

Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement.

(b) By the express will of any partner when no definite term or particular undertaking is specified.

(c) By the express will of all the partners who have not assigned their interests, or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking.

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by

the express will of any partner at any time.

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

(4) By the death of any partner.

(5) By the bankruptcy of any partner or the partnership.

(6) By decree of court under Section 48-1-29.

No Change Since 1953

48-1-29. Dissolution by decree of court.

(1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind.

(b) A partner becomes in any other way incapable of performing his part of the partnership contract.

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under Section 48-1-24 or 48-1-25:

(a) After the termination of the specified term or particular undertaking.

(b) At any time, if the partnership was a partnership at will, when the interest was assigned or when the charging order was issued.

No Change Since 1953

48-1-30. General effect of dissolution on authority of partner.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership.

(1) With respect to the partners:

(a) when the dissolution is not by the act, bankruptcy or death of a partner; or

(b) when the dissolution is by such act, bankruptcy or death of a partner in cases where Section 48-1-31 so requires.

(2) With respect to persons not partners as declared in Section 48-1-32.

No Change Since 1953

48-1-31. Right of partner to contribution from copartners after dissolution.

Where the dissolution is caused by the act, death, or bankruptcy of a partner

each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution;

(2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy; or

(3) the liability is for a debt, obligation, or liability for which the partner is not liable under Subsection 48-1-12(2).

Amended by Chapter 61, 1994 General Session

48-1-32. Power of partner to bind partnership to third persons after dissolution.

(1) After dissolution a partner can bind the partnership, except as provided in paragraph (3):

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution.

(b) By any transaction which would bind the partnership, if dissolution had not taken place, provided the other party to the transaction:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place, if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1)(b)(ii).

(4) Nothing in this section shall affect the liability under Section 48-1-13 of any person who after dissolution represents himself or consents to another's representing

him as a partner in a partnership engaged in carrying on business.

No Change Since 1953

48-1-33. Effect of dissolution on partner's existing liability.

(1) The dissolution of a partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged for any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he was a partner and for which the partner was liable under Section 48-1-12, but subject to the prior payment of his separate debts.

Amended by Chapter 61, 1994 General Session

48-1-34. Right to wind up.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representatives of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representatives or his assignee upon cause shown may obtain a winding up by the court.

No Change Since 1953

48-1-35. Rights of partners to application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under Section 48-1-33(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(i) all the rights specified in paragraph (1) of this section; and

(ii) the right as against each partner who has caused the dissolution wrongfully to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so during the agreed term for the partnership, and for that purpose may possess the partnership property; provided, they pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2)(a)(ii) of this section or secure the payment by bond approved by the court, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) If the business is not continued under the provisions of paragraph (2)(b), all the rights of a partner under paragraph (1), subject to clause (2)(a)(ii) of this section.

(ii) If the business is continued under paragraph (2)(b) of this section, the right as against his copartners, and all claiming through them, in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

No Change Since 1953

48-1-36. Rights where partnership is dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(1) to a lien on, or right of retention of, the surplus of the partnership property, after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and,

(2) to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and,

(3) to be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

No Change Since 1953

48-1-37. Rules for distribution.

In settling accounts between the partners after dissolution the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) partnership property; and

(b) contributions of the partners specified in Subsection (4).

(2) The liabilities of the partnership shall rank in order of payment, as follows:
(a) those owing to creditors other than partners;
(b) those owing to partners other than for capital and profits;
(c) those owing to partners in respect of capital; and
(d) those owing to partners in respect of profits.
(3) The assets shall be applied in the order of their declaration in Subsection (1) to the satisfaction of the liabilities.
(4) Except as provided in Subsection 48-1-12(2), the partners shall contribute as provided by Subsection 48-1-15(1) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits the additional amount necessary to pay the liabilities.
(5) An assignee for the benefit of creditors, or any person appointed by the court, shall have the right to enforce the contributions specified in Subsection (4).
(6) Any partner or his legal representative shall have the right to enforce the contributions specified in Subsection (4) to the extent of the amount that he has paid in excess of his share of the liability.
(7) The individual property of a deceased partner shall be liable for the contributions specified in Subsection (4).
(8) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.
(9) When a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:
(a) those owing to separate creditors;
(b) those owing to partnership creditors; and
(c) those owing to partners by way of contribution.

Amended by Chapter 61, 1994 General Session

48-1-38. Liability of persons continuing the business in certain cases.
(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representatives of a deceased partner assign) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first, or dissolved, partnership are also creditors of the partnership so continuing the business.
(2) When all but one partner retire and assign (or the representatives of a deceased partner assign) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.
(3) When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in paragraphs (1) and (2) of this section, with the

consent of the retired partner or the representatives of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 48-1-35(2)(b), either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representatives of the deceased partner, have a prior right to any claim of the retired partner or the representatives of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership, or on account of any consideration promised for such interest, or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

No Change Since 1953

48-1-39. Rights of retiring or estate of deceased partner when the business is continued.

When any partner retires or dies and the business is continued under any of the conditions set forth in Section 48-1-38(1), (2), (3), (5), (6), or Section 48-1-35(2)(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representatives as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest,

or, at his option or at the option of his legal representatives, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided, that the creditors of the dissolved partnership as against the separate creditors or the representative of the retired or deceased partner shall have priority on any claim arising under this section, as provided by Section 48-1-38(8).

No Change Since 1953

48-1-40. Accrual of actions.

The right to an account of his interest shall accrue to any partner or his legal representative as against the winding-up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution in the absence of any agreement to the contrary.

No Change Since 1953

48-1-41. Title.

Sections 48-1-41 through 48-1-48 are known as the "Utah Limited Liability Partnership Act."

Enacted by Chapter 61, 1994 General Session

48-1-42. Registration of limited liability partnerships.

(1) (a) A partnership shall register with the Division of Corporations and Commercial Code by filing an application or a renewal statement:

(i) to become and to continue as a limited liability partnership; or

(ii) to do business in this state as a foreign limited liability partnership.

(b) The application or renewal statement shall include:

(i) the name of the limited liability partnership;

(ii) the information required by Subsection 16-17-203(1);

(iii) the number of partners;

(iv) a brief statement of the business in which the limited liability partnership engages;

(v) a brief statement that the partnership is applying for, or seeking to renew its status as a limited liability partnership; and

(vi) if a foreign limited liability partnership, an original certificate of fact or good standing from the office of the lieutenant governor or other responsible authority of the state in which the limited liability partnership is formed.

(2) The application or renewal statement required by Subsection (1) shall be executed by a majority in voting interest of the partners or by one or more partners authorized by the partnership to execute an application or renewal statement.

(3) The application or renewal statement shall be accompanied by a filing fee established under Section 63J-1-504.

(4) The division shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) (a) The registration expires one year after the date an application is filed

unless the registration is voluntarily withdrawn by filing with the division a written withdrawal notice executed by a majority in voting interest of the partners or by one or more partners authorized to execute a withdrawal notice.

(b) Registration of a partnership as a limited liability partnership shall be renewed if no earlier than 60 days before the date the registration expires and no later than the date of expiration, the limited liability partnership files with the division a renewal statement.

(c) The division shall renew the registration as a limited liability partnership of any limited liability partnership that timely submits a completed renewal statement with the required fee.

(d) If a renewal statement is timely filed, the registration is effective for one year after the date the registration would have expired but for the filing or the renewal statement.

(6) The status of a partnership as a limited liability partnership is not affected by changes in the information stated in the application or renewal statement which take place after the filing of an application or a renewal statement.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may issue rules providing for the form content and submittal of applications for registration or of renewal statements.

Amended by Chapter 183, 2009 General Session

48-1-43. Scope of chapter -- Choice of law.

(1) A partnership, including a limited liability partnership may conduct its business, carry on its operations, and exercise the powers granted by this chapter within and without the state.

(2) (a) It is the intent of the Legislature that the legal existence of limited liability partnerships formed in this state and registered under Section 48-1-42 be recognized outside the boundaries of this state and that the laws of this state governing the limited liability partnership transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(b) It is the intent of the Legislature that the internal affairs of a limited liability partnerships formed in this state and registered under Section 48-1-42 be subject to and governed by the laws of this state, including the provisions providing for liability of partners for debts, obligations, and liabilities chargeable to partnerships.

Enacted by Chapter 61, 1994 General Session

48-1-44. Foreign limited liability partnerships.

(1) Subject to any statute regulating a specific type of business, a limited liability partnership registered and existing under the laws of another state, may do business in this state if it registers with the division in accordance with Section 48-1-42.

(2) The internal affairs of a limited liability partnership registered and existing under the laws of another jurisdiction is subject to and governed by the laws of the state where the partnership is formed, including the provisions providing for the liability of partners for debts, obligations of, and liabilities chargeable to a partnership.

(3) (a) The division may permit a tribal limited liability partnership to register with the division in the same manner as a foreign limited liability partnership formed in another state.

(b) If a tribal limited liability partnership elects to register with the division, for purposes of this chapter, the tribal limited liability partnership shall be treated in the same manner as a foreign limited liability partnership formed under the laws of another state.

Amended by Chapter 249, 2008 General Session

48-1-45. Name of registered limited liability partnership.

The name of a limited liability partnership shall contain the words "limited liability partnership" or the abbreviations "L.L.P." or "LLP" as the last words or letters of its name.

Enacted by Chapter 61, 1994 General Session

48-1-46. Professional relationship -- Personal liability.

(1) Sections 48-1-41 through 48-1-48 do not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services. All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.

(2) No partner or employee of a limited liability partnership is personally liable for the acts or omissions of any other partner or employee of the limited liability partnership.

Enacted by Chapter 61, 1994 General Session

48-1-47. Regulatory agency or board authority -- Prohibitions on individuals apply.

(1) Sections 48-1-41 through 48-1-48 do not restrict or limit the authority and duty of any appropriate regulatory agency or board to license individual persons rendering professional services or the practice of the profession that is within the jurisdiction of the regulatory agency or board, notwithstanding that the person is a partner or employee of a limited liability partnership and rendering the professional services or engaging in the practice of the profession through the limited liability partnership.

(2) No limited liability partnership may do anything that is prohibited to be done by an individual licensed to practice the profession that the limited liability partnership is organized to render.

Enacted by Chapter 61, 1994 General Session

48-1-48. Limited liability partnerships providing professional services.

(1) A limited liability partnership organized under Sections 48-1-41 through

48-1-48 to render professional services may render only one specific type of professional service, and services ancillary to that type of professional service, and may not engage in any business other than rendering the professional service that it was organized to render and services ancillary to those services.

(2) A limited liability partnership organized to render professional services:

(a) may include partners and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(b) may include partners who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services; and

(c) may render professional services in Utah only through its partners and employees who are licensed or registered by the state to render those professional services.

(3) A limited liability partnership organized to render professional services shall have the powers provided a limited liability partnership under this chapter.

Amended by Chapter 261, 2000 General Session

48-1c-101. Title.

(1) This title is known as the "Unincorporated Business Entity Act."

(2) This chapter is known as "General Provisions."

Enacted by Chapter 412, 2013 General Session

48-1d-101. Title.

This chapter may be cited as the "Utah Uniform Partnership Act."

Enacted by Chapter 412, 2013 General Session

48-1d-102. Definitions.

As used in this chapter:

(1) "Business" includes every trade, occupation, and profession.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-1d-501 which is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(a) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to

participate as a partner in the management or conduct of the partnership's activities and affairs or have access to records or other information concerning the partnership's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code.

(6) "Foreign limited liability partnership" means a foreign partnership whose partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to Subsection 48-1d-306(3).

(7) "Foreign partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a partnership if formed under the law of this state. The term includes a foreign limited liability partnership.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(10) "Limited liability partnership," except in the phrase "foreign limited liability partnership," means a partnership that has filed a statement of qualification under Section 48-1d-1101 and does not have a similar statement in effect in any other jurisdiction.

(11) "Partner" means a person that:

(a) has become a partner in a partnership under Section 48-1d-401 or was a partner in a partnership when the partnership became subject to this chapter under Section 48-1d-1405; and

(b) has not dissociated as a partner under Section 48-1d-701.

(12) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this chapter or that becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-1d-1405. The term includes a limited liability partnership.

(13) "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement, and whether oral, implied, in a record, or in any combination thereof, of all the partners of a partnership concerning the matters described in Subsection 48-1d-106(1). The term includes the agreement as amended or restated.

(14) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(15) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) "Principal office" means the principal executive office of a partnership or a foreign limited liability partnership, whether or not the office is located in this state.

(17) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or a subsequent law regulating the practice of chiropractics;

(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers or land surveyors;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

(n) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

(o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or a subsequent law regulating the practice of psychology;

(p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law

regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or

(t) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(18) "Property" means all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.

(19) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) "Registered agent" means an agent of a limited liability partnership or foreign limited liability partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the partnership.

(21) "Registered foreign limited liability partnership" means a foreign limited liability partnership that is registered to do business in this state pursuant to a statement of registration filed by the division.

(22) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(24) "Transfer" includes:

(a) an assignment;

(b) a conveyance;

(c) a sale;

(d) a lease;

(e) an encumbrance, including a mortgage or security interest;

(f) a gift; and

(g) a transfer by operation of law.

(25) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(26) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

(27) "Tribal partnership" means a partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe under whose law the partnership is formed.

(28) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Enacted by Chapter 412, 2013 General Session

48-1d-103. Knowledge -- Notice.

(1) A person knows a fact if the person:

(a) has actual knowledge of it; or

(b) is deemed to know it under Subsection (4)(a) or law other than this chapter.

(2) A person has notice of a fact if the person:

(a) has reason to know the fact from all the facts known to the person at the time in question; or

(b) is deemed to have notice of the fact under Subsection (4)(b).

(3) Subject to Subsection 48-1d-116(6), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(4) A person not a partner is deemed:

(a) to know of a limitation on authority to transfer real property as provided in Subsection 48-1d-303(7); and

(b) to have notice of:

(i) a partner's dissociation 90 days after a statement of dissociation under Section 48-1d-804 becomes effective; and

(ii) a partnership's:

(A) dissolution 90 days after a statement of dissolution under Subsection 48-1d-902(2)(b)(i) becomes effective;

(B) termination 90 days after a statement of termination under Subsection 48-1d-902(2)(b)(vi) becomes effective;

(C) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and

(D) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.

(5) A partner's knowledge or notice of a fact relating to the partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Enacted by Chapter 412, 2013 General Session

48-1d-104. Governing law.

The internal affairs of a partnership and the liability of a partner as a partner for the debts, obligations, or other liabilities of the partnership are governed by:

(1) in the case of a limited liability partnership, the law of this state; and

(2) in the case of a partnership that is not a limited liability partnership, the law of the state of the jurisdiction in which the partnership has its principal office.

Enacted by Chapter 412, 2013 General Session

48-1d-105. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

Enacted by Chapter 412, 2013 General Session

48-1d-106. Partnership agreement -- Scope, function, and limitations.

(1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:

(a) relations among the partners as partners and between the partners and the partnership;

(b) the activities and affairs of the partnership and the conduct of those activities and affairs; and

(c) the means and conditions for amending the partnership agreement.

(2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.

(3) A partnership agreement may not:

(a) vary the law applicable under Section 48-1d-104;

(b) vary the provisions of Section 48-1d-111;

(c) vary the provisions of Section 48-1d-307;

(d) unreasonably restrict the duties and rights under Section 48-1d-403, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);

(f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-1d-405(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;

(g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(h) vary the power to dissociate as a partner under Subsection 48-1d-702(1), except to require the notice under Subsection 48-1d-701(1) to be in a record;

(i) vary the right of a court to expel a partner in the events specified in Subsection 48-1d-701(5);

(j) vary the causes of dissolution specified in Subsection 48-1d-901(4), (5), or

(6);

(k) vary the requirement to wind up the partnership's activities and affairs as specified in Subsections 48-1d-902(1), (2)(a), and (4);

(l) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-1d-1023(1)(b), 48-1d-1033(1)(b), 48-1d-1043(1)(b), or 48-1d-1053(1)(b);

(m) vary any requirement, procedure, or other provision of this chapter pertaining to:

(i) registered agents; or

(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter; or

(n) except as otherwise provided in Section 48-1d-107 and Subsection 48-1d-108(2), restrict the rights under this chapter of a person other than a partner.

(4) Subject to Subsection (3)(e), without limiting other terms that may be included in a partnership agreement, the following rules apply:

(a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(b) If not unconscionable or against public policy, the partnership agreement may:

(i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-1d-405(2);

(ii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iii) alter the duty of care, except to authorize intentional misconduct or knowing violation of law; and

(iv) alter or eliminate any other fiduciary duty.

(5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(b). The court:

(a) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(b) may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:

(i) the objective of the term is unconscionable or against public policy; or

(ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session

48-1d-107. Partnership agreement -- Effect on partnership and person becoming partner -- Preformation agreement.

(1) A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership

agreement.

(2) A person that becomes a partner of a partnership is deemed to assent to the partnership agreement.

(3) Two or more persons intending to become the initial partners of a partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

Enacted by Chapter 412, 2013 General Session

48-1d-108. Partnership agreement -- Effect on third parties and relationship to records effective on behalf of partnership.

(1) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the partnership agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under Subsection 48-1d-604(2)(b) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(a) is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(b) is not effective to the extent the amendment:

(i) imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner; or

(ii) prejudices the rights under Section 48-1d-801 of a person that dissociated as a partner before the amendment was made.

(3) If a record delivered by a partnership to the division for filing becomes effective under this chapter and contains a provision that would be ineffective under Subsection 48-1d-106(3) or (4)(b) if contained in the partnership agreement, the provision is ineffective in the record.

(4) Subject to Subsection (3), if a record delivered by a partnership to the division for filing becomes effective under this chapter and conflicts with a provision of the partnership agreement:

(a) the partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Enacted by Chapter 412, 2013 General Session

48-1d-109. Delivery of record.

(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, commercial delivery service, and electronic transmission.

(2) Delivery to the division is effective only when a record is received by the division.

Enacted by Chapter 412, 2013 General Session

48-1d-110. Signing of records to be delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed by a partnership must be signed by a person authorized by the partnership.

(b) A record filed on behalf of a dissolved partnership that has no partner must be signed by the person winding up the partnership's activities and affairs under Subsection 48-1d-902(3) or a person appointed under Subsection 48-1d-902(4) to wind up the business.

(c) A statement of denial by a person under Section 48-1d-304 must be signed by that person.

(d) Any other record delivered on behalf of a person to the division for filing must be signed by that person.

(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

Enacted by Chapter 412, 2013 General Session

48-1d-111. Signing and filing pursuant to judicial order.

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned.

(2) If a petitioner under Subsection (1) is not the partnership or foreign limited liability partnership to which the record pertains, the petitioner shall make the partnership or foreign limited liability partnership a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Enacted by Chapter 412, 2013 General Session

48-1d-112. Filing requirements.

(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:

(a) The filing of the record must be required or permitted by this chapter.

(b) The record must be physically delivered in written form unless and to the

extent the division permits electronic delivery of records.

(c) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The record must be signed by a person authorized or required under this chapter to sign the record.

(e) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter but the division may redact the information.

(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.

(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

Enacted by Chapter 412, 2013 General Session

48-1d-113. Effective time and date.

Except as otherwise provided in Section 48-1d-114 and subject to Subsection 48-1d-115(3), a record filed under this chapter is effective:

(1) on the date and at the time of its filing by the division, as provided in Section 48-1d-116;

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);

(3) at a specified delayed effective time and date, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

Enacted by Chapter 412, 2013 General Session

48-1d-114. Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-1d-1024, 48-1d-1034, 48-1d-1044, and 48-1d-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being

withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

Enacted by Chapter 412, 2013 General Session

48-1d-115. Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

(a) the record at the time of filing was inaccurate;

(b) the record was defectively signed; or

(c) the electronic transmission of the record to the division was defective.

(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.

(3) A statement of correction:

(a) may not state a delayed effective date;

(b) must be signed by the person correcting the filed record;

(c) must identify the filed record to be corrected;

(d) must specify the inaccuracy or defect to be corrected; and

(e) must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-1d-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Enacted by Chapter 412, 2013 General Session

48-1d-116. Duty of division to file -- Review of refusal to file -- Transmission of information by division.

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the partnership to which the statement pertains.

(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:

(a) return the record or notify the person that submitted the record of the refusal; and

(b) provide a brief explanation in a record of the reason for the refusal.

(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The

court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

(a) in person to the person that submitted it;

(b) to the address of the person's registered agent;

(c) to the principal office of the person; or

(d) to another address the person provides to the division for delivery.

Enacted by Chapter 412, 2013 General Session

48-1d-117. Liability for inaccurate information in filed record.

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) a partner, if:

(i) the record was delivered for filing on behalf of the partnership; and

(ii) the partner had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the partner reasonably could have:

(A) effected an amendment under Subsection 48-1d-1101(6);

(B) filed a petition under Section 48-1d-111; or

(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-1d-115.

(2) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Enacted by Chapter 412, 2013 General Session

48-1d-118. Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability partnerships subject to this chapter are governed by the amendment or repeal.

Enacted by Chapter 412, 2013 General Session

48-1d-201. Partnership as entity.

(1) A partnership is an entity distinct from its partners.

(2) A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under Section 48-1d-1101.

Enacted by Chapter 412, 2013 General Session

48-1d-202. Formation of partnership.

(1) Except as otherwise provided in Subsection (2), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(2) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

Enacted by Chapter 412, 2013 General Session

48-1d-203. Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Enacted by Chapter 412, 2013 General Session

48-1d-204. When property is partnership property.

(1) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Enacted by Chapter 412, 2013 General Session

48-1d-301. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under Section 48-1d-303, the following rules apply:

(1) Each partner is an agent of the partnership for the purpose of its activities and affairs. An act of a partner, including the signing of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership binds the partnership, unless the partner did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew, or had notice, that the partner lacked authority.

(2) An act of a partner, which is not apparently for carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership, binds the partnership only if the act was actually authorized by all the other partners.

Enacted by Chapter 412, 2013 General Session

48-1d-302. Transfer of partnership property.

(1) Partnership property may be transferred as follows:

(a) Subject to the effect of a statement of partnership authority under Section 48-1d-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it

proves that execution of the instrument of initial transfer did not bind the partnership under Section 48-1d-301 and:

(a) as to a subsequent transferee who gave value for property transferred under Subsection (1)(a) or (1)(b), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) as to a transferee who gave value for property transferred under Subsection (1)(c), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection (2), from any earlier transferee of the property.

(4) If a person holds all the partners' interests in the partnership, all the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Enacted by Chapter 412, 2013 General Session

48-1d-303. Statement of partnership authority.

(1) A partnership may deliver to the division for filing a statement of partnership authority. The statement:

(a) must include:

(i) the name of the partnership; and

(ii) if the partnership is not a limited liability partnership, the street and mailing addresses of its principal office;

(b) with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and

(c) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership.

(2) To amend or cancel a statement of authority filed by the division, a partnership must deliver to the division for filing an amendment or cancellation stating:

(a) the name of the partnership;

(b) the street and mailing addresses of the partnership's principal office;

(c) the date the statement of authority being affected became effective; and

(d) the contents of the amendment or a declaration that the statement of authority is canceled.

(3) A statement of authority affects only the power of a person to bind a partnership to persons that are not partners.

(4) Subject to Subsection (3) and Subsection 48-1d-103(4)(a), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.

(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that if the person gives value:

(a) the person has knowledge to the contrary;

(b) the statement of authority has been canceled or restrictively amended under Subsection (2); or

(c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.

(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the partnership and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.

(7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(8) Subject to Subsection (9), an effective statement of dissolution is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for purposes of Subsection (7).

(9) After a statement of dissolution becomes effective, a partnership may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The postdissolution statement of authority operates as provided in Subsections (6) and (7).

(10) Unless canceled earlier, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. Cancellation is effective without recording under Subsection (6) or (7).

(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Subsection (6)(a).

Enacted by Chapter 412, 2013 General Session

48-1d-304. Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:

(1) provides the name of the partnership and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Enacted by Chapter 412, 2013 General Session

48-1d-305. Partnership liable for partner's actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of activities and affairs of the partnership or with the actual or apparent authority of the partnership.

(2) If, in the course of the partnership's activities and affairs or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Enacted by Chapter 412, 2013 General Session

48-1d-306. Partner's liability.

(1) Except as otherwise provided in Subsections (2) and (3), all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership unless otherwise agreed to by the claimant or provided by law.

(2) A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership incurred before the person became a partner.

(3) A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This Subsection (3) applies:

(a) despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under Subsection 48-1d-1101(2); and

(b) regardless of the dissolution of the limited liability partnership.

(4) The failure of a limited liability partnership to observe any formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on any partner of the limited liability partnership for a debt, obligation, or other liability of the limited liability partnership.

(5) The cancellation or administrative revocation of a limited liability partnership's statement of qualification does not affect the limitation under this section on the liability of a partner for a debt, obligation, or other liability of the partnership incurred while the statement was in effect.

(6) Subsection (3) and Part 11, Limited Liability Partnerships, do not alter any law applicable to the relationship between a person providing a professional service and a person receiving the professional service, including liability arising out of those professional services. A person providing a professional service remains personally liable for a result of that person's act or omission.

Enacted by Chapter 412, 2013 General Session

48-1d-307. Actions by and against partnership and partners.

(1) A partnership may sue and be sued in the name of the partnership.

(2) To the extent not inconsistent with Section 48-1d-306, a partner may be joined in an action against the partnership or named in a separate action.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 48-1d-306, and:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the partnership is a debtor in bankruptcy;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 48-1d-308.

Enacted by Chapter 412, 2013 General Session

48-1d-308. Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported

partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in Subsections (1) and (2), persons who are not partners as to each other are not liable as partners to other persons.

Enacted by Chapter 412, 2013 General Session

48-1d-401. Becoming partner.

(1) Upon formation of a partnership, a person becomes a partner under Subsection 48-1d-202(1).

(2) After formation of a partnership, a person becomes a partner:

(a) as provided in the partnership agreement;

(b) as a result of a transaction effective under Part 10, Merger, Interest Exchange, Conversion, and Domestication; or

(c) with the consent of all the partners.

(3) A person may become a partner without either:

(a) acquiring a transferable interest; or

(b) making or being obligated to make a contribution to the partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-402. Management rights of partners.

(1) Each partner has equal rights in the management and conduct of the partnership's activities and affairs.

(2) A partner may use or possess partnership property only on behalf of the partnership.

(3) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the activities and affairs of the partnership.

(4) A difference arising among partners as to a matter in the ordinary course of the activities of the partnership shall be decided by a majority of the partners.

(5) An act outside the ordinary course of the activities and affairs of the

partnership may be undertaken only with the consent of all partners. An act outside the ordinary course of business of a partnership, an amendment to the partnership agreement, and the approval of a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication, may be undertaken only with the affirmative vote or consent of all of the partners.

Enacted by Chapter 412, 2013 General Session

48-1d-403. Rights of partners and person dissociated as partner to information.

(1) A partnership shall keep its books and records, if any, at its principal office.

(2) On reasonable notice, a partner may inspect and copy during regular business hours, at a reasonable location specified by the partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the partner's rights and duties under the partnership agreement or this chapter.

(3) The partnership shall furnish to each partner:

(a) without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this chapter, except to the extent the partnership can establish that it reasonably believes the partner already knows the information; and

(b) on demand, any other information concerning the partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(4) The duty to furnish information under Subsection (3) also applies to each partner to the extent the partner knows any of the information described in Subsection (3).

(5) Subject to Subsection (8), on 10 days' demand made in a record received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

(a) the information pertains to the period during which the person was a partner;

(b) the person seeks the information in good faith; and

(c) the person satisfies the requirements imposed on a partner by Subsection (2).

(6) Not later than 10 days after receiving a demand under Subsection (5), the partnership in a record shall inform the person that made the demand of:

(a) the information that the partnership will provide in response to the demand and when and where the partnership will provide the information; and

(b) the partnership's reasons for declining, if the partnership declines to provide any demanded information.

(7) A partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(8) A partner or person dissociated as a partner may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or

under Subsection (11) applies both to the agent or legal representative and the partner or person dissociated as a partner.

(9) The rights under this section do not extend to a person as transferee.

(10) If a partner dies, Section 48-1d-605 applies.

(11) In addition to any restriction or condition stated in the partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-1d-404. Reimbursement, indemnification, advancement, and insurance.

(1) A partnership shall reimburse a partner for any payment made by the partner in the course of the partner's activities on behalf of the partnership, if the partner complied with Sections 48-1d-402 and 48-1d-405 in making the payment.

(2) A partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-1d-402, 48-1d-405, or 48-1d-504.

(3) In the ordinary course of its activities and affairs, a partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

(4) A partnership may purchase and maintain insurance on behalf of a partner against liability asserted against or incurred by the partner in that capacity or arising from that status even if, under Subsection 48-1d-106(3)(g), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

(5) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(6) A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (1) or (5) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

Enacted by Chapter 412, 2013 General Session

48-1d-405. Standards of conduct for partners.

(1) A partner owes to the partnership and the other partners the duties of loyalty and care stated in Subsections (2) and (3).

(2) The duty of loyalty of a partner includes the duties:

(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner:

(i) in the conduct or winding up of the partnership's activities and affairs;

(ii) from a use by the partner of the partnership's property; or

(iii) from the appropriation of a partnership opportunity;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and

(c) to refrain from competing with the partnership in the conduct of the partnership's activities and affairs before the dissolution of the partnership.

(3) The duty of care of a partner in the conduct or winding up of the partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.

(6) All the partners may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the partnership.

(8) If, as permitted by Subsection (6) or the partnership agreement, a partner enters into a transaction with the partnership which otherwise would be prohibited by Subsection (2)(b), the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

Enacted by Chapter 412, 2013 General Session

48-1d-406. Actions by partnership and partners.

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities and affairs, to:

(a) enforce the partner's rights under the partnership agreement;

(b) enforce the partner's rights under this chapter; or

(c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Enacted by Chapter 412, 2013 General Session

48-1d-407. Continuation of partnership beyond definite term or particular undertaking.

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Enacted by Chapter 412, 2013 General Session

48-1d-501. Form of contribution.

A contribution may consist of property transferred to, services performed for, or other benefit provided to the partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-502. Liability for contribution.

(1) A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, dissolution, or other inability to perform personally.

(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.

(3) The obligation of a person to make a contribution may be compromised only by consent of all partners. If a creditor of a limited liability partnership extends credit or otherwise acts in reliance on an obligation described in Subsection (1), without notice of a compromise under this Subsection (3), the creditor may enforce the obligation.

Enacted by Chapter 412, 2013 General Session

48-1d-503. Sharing of and right to distributions before dissolution.

(1) Any distributions made by a partnership before its dissolution and winding up must be in equal shares among partners, except to the extent necessary to comply with a transfer effective under Section 48-1d-603 or charging order in effect under Section 48-1d-604.

(2) A person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.

(3) A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in Section 48-1d-906, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a

creditor of the partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

Enacted by Chapter 412, 2013 General Session

48-1d-504. Limitation on distributions by limited liability partnership.

(1) A limited liability partnership may not make a distribution, including a distribution under Section 48-1d-906, if after the distribution:

(a) the limited liability partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

(b) the limited liability partnership's total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the right to receive distributions of the persons receiving the distribution.

(2) A limited liability partnership may base a determination that a distribution is not prohibited under Subsection (1) on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:

(a) in the case of a distribution as defined in Subsection 48-1d-102(4)(a), as of the earlier of the date:

(i) money or other property is transferred or debt is incurred by the limited liability partnership; or

(ii) the person entitled to the distribution ceases to own the interest or rights being acquired by the limited liability partnership in return for the distribution;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(4) A limited liability partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(5) A limited liability partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that a payment of a distribution could then be made under this section. If the

indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(6) In measuring the effect of a distribution under Section 48-1d-906, the liabilities of a dissolved limited liability partnership do not include any claim that has been disposed of under Sections 48-1d-907, 48-1d-908, and 48-1d-909.

Enacted by Chapter 412, 2013 General Session

48-1d-505. Liability for improper distributions by a limited liability partnership.

(1) If a partner of a limited liability partnership consents to a distribution made in violation of Section 48-1d-504 and in consenting to the distribution fails to comply with Section 48-1d-405, the partner is personally liable to the limited liability partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-1d-504.

(2) A person that receives a distribution knowing that the distribution violated Section 48-1d-504 is personally liable to the limited liability partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-1d-504.

(3) A person against which an action is commenced because the person is liable under Subsection (1) may:

(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (2) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (2).

(4) An action under this section is barred unless commenced not later than two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-1d-601. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Enacted by Chapter 412, 2013 General Session

48-1d-602. Nature of transferable interest.

A transferable interest is personal property.

Enacted by Chapter 412, 2013 General Session

48-1d-603. Transfer of transferable interest.

(1) A transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause a person's dissociation or a dissolution and winding

up of the partnership's activities and affairs; and

(c) subject to Section 48-1d-605, does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's activities and affairs; or

(ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the partnership's activities and affairs.

(2) A transferee has the right to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; and

(b) seek under Subsection 48-1d-901(5) a judicial determination that it is equitable to wind up the partnership's activities and affairs.

(3) In a dissolution and winding up of a partnership, a transferee is entitled to an account of the partnership's transactions only from the date of the last account agreed to by the partners.

(4) A partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.

(5) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.

(6) Except as otherwise provided in Subsection 48-1d-701(4)(b), if a partner transfers a transferable interest, the transferor retains the rights of a partner other than the transferable interest transferred and retains all duties and obligations of a partner.

(7) If a partner transfers a transferable interest to a person that becomes a partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under Sections 48-1d-502 and 48-1d-505 known to the transferee when the transferee becomes a partner.

Enacted by Chapter 412, 2013 General Session

48-1d-604. Charging order.

(1) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and, after the partnership has been served with the charging order, requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to Section 48-1d-603.

(4) At any time before foreclosure under Subsection (3), the partner or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under Subsection (3), a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a partner or transferee, in the capacity of judgment creditor, may satisfy the judgment from the judgment debtor's transferable interest.

Enacted by Chapter 412, 2013 General Session

48-1d-605. Power of legal representative of deceased partner.

If a partner dies, the deceased partner's legal representative may exercise:

(1) the rights of a transferee provided in Subsection 48-1d-603(3); and

(2) for purposes of settling the estate, the rights the deceased partner had under Section 48-1d-403.

Enacted by Chapter 412, 2013 General Session

48-1d-701. Events causing dissociation.

A person is dissociated as a partner when:

(1) the partnership has notice of the person's express will to withdraw as a partner, but, if the person specified a withdrawal date later than the date the partnership had notice, on that later date;

(2) an event stated in the partnership agreement as causing the person's dissociation occurs;

(3) the person is expelled as a partner pursuant to the partnership agreement;

(4) the person is expelled as a partner by the unanimous vote or consent of the other partners if:

(a) it is unlawful to carry on the partnership's activities and affairs with the person as a partner;

(b) there has been a transfer of all of the person's transferable interest in the partnership, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-1d-604, which has not been foreclosed;

(c) the person is a corporation and:

(i) the partnership notifies the person that it will be expelled as a partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification, the statement of dissolution or the equivalent has not been revoked or the charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(5) on application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 48-1d-405; or

(c) engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the partnership's activities and affairs with the person as a partner;

(6) in the case of an individual:

(a) the individual dies;

(b) a guardian or general conservator for the individual is appointed; or

(c) a court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this chapter or the partnership agreement;

(7) the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all, or substantially all, of the person's property;

(8) in the case of a person that is a testamentary or inter vivos trust or is acting as a partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the partnership is distributed;

(9) in the case of a person that is an estate or is acting as a partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the partnership is distributed, but not merely by reason of the substitution of a successor personal representative;

(10) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(11) the partnership participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the partnership is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a partner;

(12) the partnership participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a partner;

(13) the partnership participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(14) the partnership participates in a domestication under Part 10, Merger,

Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a partner; or

(15) the partnership dissolves and completes winding up.

Enacted by Chapter 412, 2013 General Session

48-1d-702. Power to dissociate as partner -- Wrongful dissociation.

(1) A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner by express will under Subsection 48-1d-701(1).

(2) A person's dissociation as a partner is wrongful only if the dissociation:

(a) is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:

(i) the person withdraws by express will, unless the withdrawal follows not later than 90 days after another person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under this subsection;

(ii) the person is expelled by judicial order under Subsection 48-1d-701(5);

(iii) the person is dissociated under Subsection 48-1d-701(7); or

(iv) in the case of a person that is not a trust other than a business trust, an estate, an individual, or a trust other than a business trust, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the partner to the partnership or the other partners.

Enacted by Chapter 412, 2013 General Session

48-1d-703. Effect of dissociation.

(1) If a person's dissociation results in a dissolution and winding up of the partnership's activities and affairs, Part 9, Dissolution and Winding Up, applies, otherwise, Part 8, Partner's Dissociation When Business Not Wound Up, applies.

(2) If a person is dissociated as a partner:

(a) the person's right to participate in the management and conduct of the partnership's activities and affairs terminates, except as otherwise provided in Subsection 48-1d-902(3); and

(b) the person's duties and obligations under Section 48-1d-405:

(i) end with regard to matters arising and events occurring after the person's dissociation; and

(ii) continue only with regard to matters arising and events occurring before the person's dissociation, unless the partner participates in winding up the partnership's activities and affairs pursuant to Section 48-1d-902.

(3) A person's dissociation does not of itself discharge the person from a debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

Enacted by Chapter 412, 2013 General Session

48-1d-801. Purchase of interest of person dissociated as partner.

(1) If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs under Section 48-1d-901, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (2).

(2) The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under Subsection 48-1d-906(2) if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

(a) the liquidation value; or

(b) the value based on a sale of the entire business as a going concern without the person.

(3) Interest accrues on the buyout price from the date of dissociation to the date of payment, but damages for wrongful dissociation under Subsection 48-1d-702(2), and all other amounts owing, whether or not presently due, from the person dissociated as a partner to the partnership, must be offset against the buyout price.

(4) A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person dissociated as a partner under Section 48-1d-802.

(5) If no agreement for the purchase of the interest of a person dissociated as a partner is reached not later than 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (3).

(6) If a deferred payment is authorized under Subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by Subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) an explanation of how the estimated amount of the payment was calculated; and

(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, not later than 120 days after the written notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under Subsection (3), or other terms of the obligation to purchase.

(8) A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A person dissociated as a partner may maintain an action against the partnership, pursuant to Subsection 48-1d-406(2), to determine the buyout price of that person's interest, any offsets under Subsection (3), or other terms of the obligation to purchase. The action must be commenced not later than 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person's interest, any offset due under Subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (7).

Enacted by Chapter 412, 2013 General Session

48-1d-802. Power to bind and liability of person dissociated as partner.

(1) After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs and before the partnership is merged out of existence, converted, or domesticated under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or dissolved, the partnership is bound by an act of the person only if:

(a) the act would have bound the partnership under Section 48-1d-301 before dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.

(2) If a partnership is bound under Subsection (1), the person dissociated as a partner which caused the partnership to be bound is liable:

(a) to the partnership for any damage caused to the partnership arising from the obligation incurred under Subsection (1); and

(b) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

Enacted by Chapter 412, 2013 General Session

48-1d-803. Liability of person dissociated as partner to other persons.

(1) A person's dissociation as a partner does not of itself discharge the person's liability as a partner for a debt, obligation, or other liability of the partnership incurred before dissociation. Except as otherwise provided in Subsection (2), the person is not liable for a partnership obligation incurred after dissociation.

(2) A person that has dissociated as a partner without the dissociation resulting

in a dissolution and winding up of the partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if:

(a) a partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation; and

(ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a partner.

(3) By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for an obligation of the partnership.

(4) A person dissociated as a partner is released from liability for an obligation of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Enacted by Chapter 412, 2013 General Session

48-1d-804. Statement of dissociation.

(1) A person dissociated as a partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a person dissociated as a partner for the purposes of Subsections 48-1d-303(4) and (5).

Enacted by Chapter 412, 2013 General Session

48-1d-805. Continued use of partnership name.

Continued use of a partnership name, or name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

Enacted by Chapter 412, 2013 General Session

48-1d-901. Events causing dissolution.

A partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) in a partnership at will, the partnership has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2) through (10), but, if the person specifies a withdrawal date later than the date the partnership had notice, on the later date;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership's activities and affairs, for which purpose a person's rightful

dissociation pursuant to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up the partnership's activities and affairs;

(b) the express consent of all the partners to wind up the partnership's activities and affairs; or

(c) the expiration of the term or the completion of the undertaking;

(3) an event or circumstance that the partnership agreement states causes dissolution;

(4) on application by a partner, the entry by the district court of an order dissolving the partnership on the ground that:

(a) the conduct of all or substantially all the partnership's activities and affairs is unlawful;

(b) the economic purpose of the partnership is likely to be unreasonably frustrated;

(c) another partner has engaged in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(d) it is not otherwise reasonably practicable to carry on the partnership's activities and affairs in conformity with the partnership agreement;

(5) on application by a transferee, the entry by the district court of an order dissolving the partnership on the ground that it is equitable to wind up the partnership's activities and affairs:

(a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(6) the passage of 90 consecutive days during which the partnership does not have at least two partners.

Enacted by Chapter 412, 2013 General Session

48-1d-902. Winding up.

(1) A dissolved partnership shall wind up its activities and affairs and, except as otherwise provided in Section 48-1d-903, the partnership continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, the partnership:

(a) shall discharge the partnership's debts, obligations, and other liabilities, settle and close the partnership's activities and affairs, and marshal and distribute the assets of the partnership; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the partnership and that the partnership is dissolved;

(ii) preserve the partnership's activities and affairs and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the partnership and that the partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.

(4) If a dissolved partnership does not have a partner and no person has the right to participate in winding up under Subsection (3), the personal or legal representative of the last person to have been a partner may wind up the partnership's activities and affairs. If the representative does not exercise that right, a person to wind up the partnership's activities and affairs may be appointed by the consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's activities and affairs.

(5) On the application of any partner or person entitled under Subsection (3) to participate in winding up, the district court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:

(a) the partnership does not have a partner, and within a reasonable time following the dissolution no person has been appointed under Subsection (4); or

(b) the applicant establishes other good cause.

Enacted by Chapter 412, 2013 General Session

48-1d-903. Rescinding dissolution.

(1) A partnership may rescind its dissolution, unless a statement of termination applicable to the partnership is effective or the district court has entered an order under Subsection 48-1d-901(4) or (5) dissolving the partnership.

(2) Rescinding dissolution under this section requires:

(a) the affirmative vote or consent of each partner;

(b) if a statement of dissolution applicable to the partnership has been filed by the division but has not become effective, delivery to the division for filing of a statement of withdrawal under Section 48-1d-114 applicable to the statement of dissolution; and

(c) if a statement of dissolution applicable to the partnership is effective, the delivery to the division for filing of a statement of correction under Section 48-1d-115 stating that dissolution has been rescinded under this section.

(3) If a partnership rescinds its dissolution:

(a) the partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Enacted by Chapter 412, 2013 General Session

48-1d-904. Power to bind partnership after dissolution.

(1) A partnership is bound by a partner's act after dissolution which:

(a) is appropriate for winding up the partnership's activities and affairs; or

(b) would have bound the partnership under Section 48-1d-301 before dissolution, if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(2) A person dissociated as a partner binds a partnership through an act occurring after dissolution if at the time the other party enters into the transaction:

(a) less than two years has passed since the dissociation;

(b) the other party does not have notice of the dissociation and reasonably believes that the person is a partner; and

(c) the act:

(i) is appropriate for winding up the partnership's activities and affairs; or

(ii) would have bound the partnership under Section 48-1d-301 before dissolution, and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

Enacted by Chapter 412, 2013 General Session

48-1d-905. Liability after dissolution.

(1) If a partner having knowledge of the dissolution causes a partnership to incur an obligation under Subsection 48-1d-904(1) by an act that is not appropriate for winding up the partnership's activities and affairs, the partner is liable:

(a) to the partnership for any damage caused to the partnership arising from the obligation; and

(b) if another partner or person dissociated as a partner is liable for the obligation, to that other partner or person for any damage caused to that other partner or person arising from the liability.

(2) If a person dissociated as a partner causes a partnership to incur an obligation under Subsection 48-1d-904(2), the person is liable:

(a) to the partnership for any damage caused to the partnership arising from the obligation; and

(b) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the obligation.

Enacted by Chapter 412, 2013 General Session

48-1d-906. Disposition of assets in winding up -- When contributions required.

(1) In winding up its activities and affairs, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.

(2) After a partnership complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-1d-604:

(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership, except to the extent necessary to comply with any transfer effective under Section 48-1d-603.

(3) If a partnership's assets are insufficient to satisfy all its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability partnership, the following rules apply:

(a) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under Subsections 48-1d-803(3) and (4) shall contribute to the partnership to enable the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under Subsection (3)(a) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.

(d) A person that makes an additional contribution under Subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under Subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this Subsection (3) more than the amount additionally contributed. A person's liability under this Subsection (3) may not exceed the amount the person failed to contribute.

(4) If a partnership does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(5) All distributions made under Subsections (2) and (4) must be paid in money.

Enacted by Chapter 412, 2013 General Session

48-1d-907. Known claims against dissolved limited liability partnership.

(1) Except as otherwise provided in Subsection (4), a dissolved limited liability partnership may give notice of a known claim under Subsection (2), which has the

effect provided in Subsection (3).

(2) A dissolved limited liability partnership may in a record notify its known claimants of the dissolution. The notice must:

(a) specify the information required to be included in a claim;

(b) state that the claim must be in writing and provide a mailing address to which the claim is to be sent;

(c) state the deadline for receipt of a claim, which may not be less than 120 days after the date of the notice is received by the claimant;

(d) state that the claim will be barred if not received by the deadline; and

(e) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 48-1d-305.

(3) A claim against a dissolved limited liability partnership is barred if the requirements of Subsection (2) are met and:

(a) the claim is not received by the specified deadline; or

(b) if the claim is timely received but rejected by the limited liability partnership:

(i) the partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim not later than 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-1d-908. Other claims against dissolved limited liability partnership.

(1) A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the dissolved limited liability partnership to present them in accordance with the notice.

(2) A notice under Subsection (1) must:

(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the dissolved limited liability partnership's registered agent is or was last located and in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the dissolved limited liability partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; and

(d) unless the dissolved limited liability partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the dissolved limited liability partnership will also bar any corresponding claim against any

partner or person dissociated as a partner which is based on Section 48-1d-306.

(3) If a dissolved limited liability partnership publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited liability partnership not later than three years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under Section 48-1d-907;

(b) a claimant whose claim was timely sent to the partnership but not acted on; and

(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(4) A claim not barred under this section or Section 48-1d-907 may be enforced:

(a) against a dissolved limited liability partnership, to the extent of its undistributed assets;

(b) except as otherwise provided in Section 48-1d-909, if assets of the dissolved limited liability partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the dissolved limited liability partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution; and

(c) against any person liable on the claim under Sections 48-1d-306, 48-1d-803, and 48-1d-905.

Enacted by Chapter 412, 2013 General Session

48-1d-909. Court proceedings.

(1) A dissolved limited liability partnership that has published a notice under Section 48-1d-908 may file an application with the district court in the county where the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-1d-907(3).

(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited liability partnership.

(3) In any proceeding under this section, the district court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.

(4) A dissolved limited liability partnership that provides security in the amount and form ordered by the district court under Subsection (1) satisfies the dissolved

limited liability partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a partner or transferee who receives assets in liquidation.

(5) This section applies only to a debt, obligation, or other liability incurred while a partnership was a limited liability partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-910. Liability of partner and person dissociation as partner when claim against limited liability partnership is barred.

If a claim against a dissolved limited liability partnership is barred under Section 48-1d-907, 48-1d-908, or 48-1d-909, any corresponding claim under Section 48-1d-306, 48-1d-803, or 48-1d-905 is also barred.

Enacted by Chapter 412, 2013 General Session

48-1d-1001. Definitions.

In this part:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Sections 48-1d-1041 through 48-1d-1046.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-1d-1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(8) "Domesticated limited liability partnership" means a domesticating limited liability partnership as it continues in existence after a domestication.

(9) "Domesticating limited liability partnership" means a domestic limited liability partnership that approves a plan of domestication pursuant to Section 48-1d-1053 or foreign limited liability partnership that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Sections 48-1d-1051 through 48-1d-1056.

(11) "Entity":

(a) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;
(iv) a limited partnership, including a limited liability limited partnership;
(v) a limited liability company;
(vi) a limited cooperative association;
(vii) an unincorporated nonprofit association;
(viii) a statutory trust, business trust, or common-law business trust; or
(ix) any other person that has:
(A) a legal existence separate from any interest holder of that person; or
(B) the power to acquire an interest in real property in its own name; and
(b) does not include:
(i) an individual;
(ii) a trust with a predominantly donative purpose, or a charitable trust;
(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;
(iv) a decedent's estate; or
(v) a government or a governmental subdivision, agency, or instrumentality.
(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.
(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.
(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
(a) receive or demand access to information concerning, or the books and records of, the entity;
(b) vote for or consent to the election of the governors of the entity; or
(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.
(15) "Governor" means:
(a) a director of a business corporation;
(b) a director or trustee of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a manager of a manager-managed limited liability company;
(f) a member of a member-managed limited liability company;
(g) a director of a limited cooperative association;
(h) a manager of an unincorporated nonprofit association;
(i) a trustee of a statutory trust, business trust, or common-law business trust; or
(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
(16) "Interest" means:
(a) a share in a business corporation;
(b) a membership in a nonprofit corporation;
(c) a partnership interest in a general partnership;
(d) a partnership interest in a limited partnership;
(e) a membership interest in a limited liability company;

(f) a member's interest in a limited cooperative association;

(g) a membership in an unincorporated nonprofit association;

(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or

(i) a governance interest or distributional interest in any other type of unincorporated entity.

(17) "Interest exchange" means a transaction authorized by Sections 48-1d-1031 through 48-1d-1036.

(18) "Interest holder" means:

(a) a shareholder of a business corporation;

(b) a member of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

(e) a limited partner of a limited partnership;

(f) a member of a limited liability company;

(g) a member of a limited cooperative association;

(h) a member of an unincorporated nonprofit association;

(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(j) any other direct holder of an interest.

(19) "Interest holder liability" means:

(a) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(21) "Merger" means a transaction authorized by Sections 48-1d-1021 through 48-1d-1026.

(22) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(23) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(24) "Organic rules" means the public organic record and private organic rules of an entity.

(25) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(26) "Plan of conversion" means a plan under Section 48-1d-1042.

(27) "Plan of domestication" means a plan under Section 48-1d-1052.

(28) "Plan of interest exchange" means a plan under Section 48-1d-1032.

(29) "Plan of merger" means a plan under Section 48-1d-1022.

(30) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not

part of its public organic record, if any. The term includes:

(a) the bylaws of a business corporation;

(b) the bylaws of a nonprofit corporation;

(c) the partnership agreement of a general partnership;

(d) the partnership agreement of a limited partnership;

(e) the operating agreement of a limited liability company;

(f) the bylaws of a limited cooperative association;

(g) the governing principles of an unincorporated nonprofit association; and

(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(31) "Protected agreement" means:

(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;

(b) an agreement that is binding on an entity on January 1, 2014;

(c) the organic rules of an entity in effect on January 1, 2014; or

(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.

(32) "Public organic record" means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) the articles of incorporation of a business corporation;

(b) the articles of incorporation of a nonprofit corporation;

(c) the certificate of limited partnership of a limited partnership;

(d) the certificate of organization of a limited liability company;

(e) the articles of organization of a limited cooperative association; and

(f) the certificate of trust of a statutory trust or similar record of a business trust.

(33) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.

(34) "Statement of conversion" means a statement under Section 48-1d-1045.

(35) "Statement of domestication" means a statement under Section 48-1d-1055.

(36) "Statement of interest exchange" means a statement under Section 48-1d-1035.

(37) "Statement of merger" means a statement under Section 48-1d-1025.

(38) "Surviving entity" means an entity that continues in existence after or is created by a merger.

(39) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

Enacted by Chapter 412, 2013 General Session

48-1d-1002. Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the

application or requirements of, law other than this part.

Enacted by Chapter 412, 2013 General Session

48-1d-1003. Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Enacted by Chapter 412, 2013 General Session

48-1d-1004. Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

Enacted by Chapter 412, 2013 General Session

48-1d-1005. Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

Enacted by Chapter 412, 2013 General Session

48-1d-1006. Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

Enacted by Chapter 412, 2013 General Session

48-1d-1007. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

Enacted by Chapter 412, 2013 General Session

48-1d-1008. Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(a) the organic law permits the organic rules to limit the availability of appraisal rights; and

(b) the organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:

(a) the entity's organic rules; or

(b) the plan.

Enacted by Chapter 412, 2013 General Session

48-1d-1021. Merger authorized.

(1) By complying with Sections 48-1d-1021 through 48-1d-1026:

(a) one or more domestic partnerships may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(b) two or more foreign entities may merge into a domestic partnership.

(2) By complying with the provisions of Sections 48-1d-1021 through 48-1d-1026 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-1d-1021 through 48-1d-1026 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-1d-1022. Plan of merger.

(1) A domestic partnership may become a party to a merger under Sections 48-1d-1021 through 48-1d-1026 by approving a plan of merger. The plan must be in a record and contain:

(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(c) the manner of converting the interests in each party to the merger into

interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;

(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(f) the other terms and conditions of the merger; and

(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-1d-1023. Approval of merger.

(1) A plan of merger is not effective unless it has been approved:

(a) by a domestic merging partnership, by all the partners of the partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of a domestic merging partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(i) the partnership agreement of the partnership provides in a record for the approval of a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and

(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A merger involving a domestic merging entity that is not a partnership is not effective unless the merger is approved by that entity in accordance with its organic law.

(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-1d-1024. Amendment or abandonment of plan of merger.

(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic merging partnership may approve an amendment of a plan of merger:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging partnership may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement of merger becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the plan of merger;

(b) the date on which the statement of merger was delivered to the division for filing; and

(c) a statement that the merger has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-1d-1025. Statement of merger.

(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.

(2) A statement of merger must contain:

(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(b) the name, jurisdiction of formation, and type of entity of the surviving entity;

(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-1d-1021 through 48-1d-1026 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1026(5).

(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-1d-1026. Effect of merger.

(1) When a merger becomes effective:

(a) the surviving entity continues or comes into existence;

(b) each merging entity that is not the surviving entity ceases to exist;

(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and liabilities of the surviving entity;

(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(f) if the surviving entity exists before the merger:

(i) all its property continues to be vested in it without transfer, reversion, or impairment;

(ii) it remains subject to all its debts, obligations, and other liabilities; and

(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(h) if the surviving entity exists before the merger:

(i) its public organic record, if any, is amended as provided in the statement of merger; and

(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(i) if the surviving entity is created by the merger:

(i) its public organic record, if any, is effective; and

(ii) its private organic rules are effective; and

(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-1d-1008 and the merging entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or

third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.

(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.

(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.

(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.

(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section 16-17-301.

(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

Enacted by Chapter 412, 2013 General Session

48-1d-1031. Interest exchange authorized.

(1) By complying with Sections 48-1d-1031 through 48-1d-1036:

(a) a domestic partnership may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(b) all of one or more classes or series of interests of a domestic partnership may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(2) By complying with the provisions of Sections 48-1d-1031 through 48-1d-1036 applicable to foreign entities, a foreign entity may be the acquiring or

acquired entity in an interest exchange under Sections 48-1d-1031 through 48-1d-1036 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic partnership but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic partnership is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-1d-1032. Plan of interest exchange.

(1) A domestic partnership may be the acquired entity in an interest exchange under Sections 48-1d-1031 through 48-1d-1036 by approving a plan of interest exchange. The plan must be in a record and contain:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) any proposed amendments to the partnership agreement that are, or are proposed to be, in a record of the acquired entity;

(e) the other terms and conditions of the interest exchange; and

(f) any other provision required by the law of this state or the partnership agreement of the acquired entity.

(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-1d-1033. Approval of interest exchange.

(1) A plan of interest exchange is not effective unless it has been approved:

(a) by all the partners of a domestic acquired partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of the domestic acquired partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:

(i) the partnership agreement of the partnership provides in a record for the approval of an interest exchange or a merger in which some or all its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and

(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) An interest exchange involving a domestic acquired entity that is not a partnership is not effective unless it is approved by the domestic entity in accordance with its organic law.

(3) An interest exchange involving a foreign acquired entity is not effective

unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

Enacted by Chapter 412, 2013 General Session

48-1d-1034. Amendment or abandonment of plan of interest exchange.

(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic acquired partnership may approve an amendment of a plan of interest exchange:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the acquired partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the acquired partnership under the plan;

(ii) the partnership agreement of the acquired partnership that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the partners of the acquired partnership under this chapter or the partnership agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired partnership may abandon the plan in the same manner as the plan was approved.

(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired partnership, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the acquired partnership;

(b) the date on which the statement of interest exchange was delivered to the division for filing; and

(c) a statement that the interest exchange has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-1d-1035. Statement of interest exchange.

(1) A statement of interest exchange must be signed by a domestic acquired partnership and delivered to the division for filing.

(2) A statement of interest exchange must contain:

(a) the name of the acquired partnership;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity; and

(c) a statement that the plan of interest exchange was approved by the acquired entity in accordance with Sections 48-1d-1031 through 48-1d-1036.

(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.

(4) A plan of interest exchange that is signed by a domestic acquired partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

Enacted by Chapter 412, 2013 General Session

48-1d-1036. Effect of interest exchange.

(1) When an interest exchange in which the acquired entity is a domestic partnership becomes effective:

(a) the interests in the domestic acquired partnership that are the subject of the interest exchange cease to exist or are converted or exchanged, and the partners holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-1d-1008;

(b) the acquiring entity becomes the interest holder of the interests in the acquired partnership stated in the plan of interest exchange to be acquired by the acquiring entity; and

(c) the provisions of the partnership agreement of the acquired partnership that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(2) Except as otherwise provided in the partnership agreement of a domestic acquired partnership, the interest exchange does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the acquired partnership.

(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired partnership and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired partnership with respect to which the person had interest holder liability is as follows:

(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the acquired entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

Enacted by Chapter 412, 2013 General Session

48-1d-1041. Conversion authorized.

(1) By complying with Sections 48-1d-1041 through 48-1d-1046, a domestic partnership may become:

(a) a domestic entity that is a different type of entity; or

(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-1d-1041 through 48-1d-1046 applicable to foreign entities, a foreign entity that is not a foreign partnership may become a domestic partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic partnership but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-1d-1042. Plan of conversion.

(1) A domestic partnership may convert to a different type of entity under Sections 48-1d-1041 through 48-1d-1046 by approving a plan of conversion. The plan must be in a record and contain:

(a) the name of the converting partnership;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner of converting the interests in the converting partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed public organic record of the converted entity if it will be a filing entity;

(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(f) the other terms and conditions of the conversion; and

(g) any other provision required by the law of this state or the partnership agreement of the converting partnership.

(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-1d-1043. Approval of conversion.

(1) A plan of conversion is not effective unless it has been approved:

(a) by a domestic converting partnership by all the partners of the partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of a domestic converting partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:

(i) the partnership agreement provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A conversion involving a domestic converting entity that is not a partnership is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-1d-1044. Amendment or abandonment of plan of conversion.

(1) A plan of conversion of a domestic converting partnership may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the entity in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting entity under the plan;

(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(2) After a plan of conversion has been approved by a domestic converting partnership and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting partnership may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has

been delivered to the division for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the converting partnership;

(b) the date on which the statement of conversion was delivered to the division for filing; and

(c) a statement that the conversion has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-1d-1045. Statement of conversion.

(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.

(2) A statement of conversion must contain:

(a) the name, jurisdiction of formation, and type of entity of the converting entity;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-1d-1041 through 48-1d-1046 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;

(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1046(5).

(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.

(4) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-1d-1046. Effect of conversion.

(1) When a conversion in which the converted entity is a domestic partnership becomes effective:

(a) the converted entity is:

(i) organized under and subject to this chapter; and

(ii) the same entity without interruption as the converting entity;

(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) if the converted entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(g) the provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(h) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-1d-1008 and the converting entity's organic law.

(2) Except as otherwise provided in the partnership agreement of a domestic converting partnership, the conversion does not give rise to any rights that a partner or third party would otherwise have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic partnership with respect to which the person had interest holder liability is as follows:

(a) The conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 16-17-301.

(6) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Enacted by Chapter 412, 2013 General Session

48-1d-1051. Domestication authorized.

(1) By complying with Sections 48-1d-1051 through 48-1d-1056, a domestic limited liability partnership may become a foreign limited liability partnership if the domestication is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-1d-1051 through 48-1d-1056 applicable to foreign limited liability partnerships, a foreign limited liability partnership may become a domestic limited liability partnership if the domestication is authorized by the law of the foreign limited liability partnership's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability partnership but does not refer to a domestication, the provision applies to a domestication of the limited liability partnership as if the domestication were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-1d-1052. Plan of domestication.

(1) A domestic limited liability partnership may become a foreign limited liability partnership in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(a) the name of the domesticating limited liability partnership;

(b) the name and jurisdiction of formation of the domesticated limited liability partnership;

(c) the manner of converting the interests in the domesticating limited liability partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed statement of qualification of the domesticated limited liability partnership;

(e) the full text of the partnership agreement of the domesticated limited liability partnership that are proposed to be in a record;

(f) the other terms and conditions of the domestication; and

(g) any other provision required by the law of this state or the partnership agreement of the domesticating limited liability partnership.

(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-1d-1053. Approval of domestication.

(1) A plan of domestication of a domestic domesticating limited liability

partnership is not effective unless it has been approved:

(a) by all the partners entitled to vote on or consent to any matter; and

(b) in a record, by each partner that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:

(i) the partnership agreement of the entity provides in a record for the approval of a domestication or merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and

(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A domestication of a foreign domesticating limited liability partnership is not effective unless it is approved in accordance with the law of the foreign limited liability partnership's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-1d-1054. Amendment or abandonment of plan of domestication.

(1) A plan of domestication of a domestic domesticating limited liability partnership may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the limited liability partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the domesticating limited liability partnership under the plan;

(ii) the partnership agreement of the domesticated limited liability partnership that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the partners of the domesticated limited liability partnership under its organic law or partnership agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating limited liability partnership and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability partnership may abandon the plan in the same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement of domestication becomes effective, a statement of abandonment, signed by the limited liability partnership, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of

abandonment must contain:

(a) the name of the domesticating limited liability partnership;

(b) the date on which the statement of domestication was delivered to the division for filing; and

(c) a statement that the domestication has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-1d-1055. Statement of domestication.

(1) A statement of domestication must be signed by the domesticating limited liability partnership and delivered to the division for filing.

(2) A statement of domestication must contain:

(a) the name of the domesticating limited liability partnership and the name of the jurisdiction whose law governs the domesticating limited liability partnership's internal affairs;

(b) the name of the domesticated limited liability partnership and the name of the jurisdiction whose law governs the domesticating limited liability partnership's internal affairs;

(c) if the domesticating limited liability partnership is a domestic limited liability partnership, a statement that the plan of domestication was approved in accordance with Sections 48-1d-1051 through 48-1d-1056 or, if the domesticating limited liability partnership is a foreign limited liability partnership, a statement that the domestication was approved in accordance with the law of the jurisdiction whose law governs the internal affairs of the foreign limited liability partnership;

(d) the statement of qualification of the domesticated limited liability partnership, as an attachment; and

(e) if the domesticated foreign limited liability partnership is not a registered foreign limited liability partnership, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1056(5).

(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.

(4) The statement of qualification of a domesticated domestic limited liability partnership must satisfy the requirements of the law of this state, but the statement does not need to be signed.

(5) A plan of domestication that is signed by a domesticating domestic limited liability partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-1d-1056. Effect of domestication.

(1) When a domestication becomes effective:

(a) the domesticated limited liability partnership is:

(i) organized under and subject to the organic law of the domesticated limited liability partnership; and

(ii) the same entity without interruption as the domesticating limited liability partnership;

(b) all property of the domesticating limited liability partnership continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the domesticating limited liability partnership continue as debts, obligations, and other liabilities of the domesticated limited liability partnership;

(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited liability partnership remain in the domesticated limited liability partnership;

(e) the name of the domesticated limited liability partnership may be substituted for the name of the domesticating limited liability partnership in any pending action or proceeding;

(f) the statement of qualification of the domestic limited liability partnership is effective;

(g) the provisions of the partnership agreement of the domesticated limited liability partnership that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) the interests in the domesticating limited liability partnership are converted to the extent and as approved in connection with the domestication, and the partners of the domesticating limited liability partnership are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-1d-1008.

(2) Except as otherwise provided in the organic law or partnership agreement of the domesticating limited liability partnership, the domestication does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited liability partnership.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability partnership and becomes subject to interest holder liability with respect to a domestic limited liability partnership as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited liability partnership and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective:

(a) The domestication does not discharge any interest holder liability under this part to the extent the interest holder liability arose before the domestication became effective.

(b) A person does not have interest holder liability under this chapter for any debt, obligation, or other liability that arise after the domestication becomes effective.

(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, or this chapter, or the partnership agreement of a domestic domesticating limited liability partnership with respect to any interest holder

liability preserved under Subsection (4)(a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign limited liability partnership that is the domesticated limited liability partnership may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 16-17-301.

(6) If the domesticating limited liability partnership is a registered foreign limited liability partnership, the registration of the foreign limited liability partnership is canceled when the domestication becomes effective.

(7) A domestication does not require the limited liability partnership to wind up its business and does not constitute or cause the dissolution of the limited liability partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-1101. Statement of qualification.

(1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote or consent necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly addresses obligations to contribute to the partnership, the vote or consent necessary to amend those provisions.

(3) After the approval required by Subsection (2), a partnership may become a limited liability partnership by delivering to the division for filing a statement of qualification. The statement of qualification must contain:

(a) the name of the limited liability partnership;

(b) the street address of the limited liability partnership's principal office and, if different, the street address of an office in this state, if any;

(c) the information required by Subsection 16-17-203(1); and

(d) a statement that the partnership elects to become a limited liability partnership.

(4) A partnership's status as a limited liability partnership remains effective, regardless of changes in the limited liability partnership, until it is canceled pursuant to Subsection (6) or administratively revoked pursuant to Section 48-1d-1102.

(5) The status of a partnership as a limited liability partnership and the liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.

(6) A limited liability partnership may amend or cancel its statement of qualification by delivering to the division for filing a statement of amendment or cancellation. The statement must be consented to by all partners and state the name of the limited liability partnership and in the case of:

(a) an amendment, state the amendment; and

(b) a cancellation, state that the statement of qualification is canceled.

Enacted by Chapter 412, 2013 General Session

48-1d-1102. Administrative revocation of statement of qualification.

(1) The division may commence a proceeding under Subsections (2) and (3) to revoke the statement of qualification of a limited liability partnership administratively if the limited liability partnership does not:

(a) pay any fee, tax, or penalty required to be paid to the division not later than 60 days after it is due;

(b) deliver an annual report to the division not later than 60 days after it is due; or

(c) have a registered agent in this state for 60 consecutive days.

(2) If the division determines that one or more grounds exist for administratively revoking a statement of qualification, the division shall serve the limited liability partnership with notice in a record of the division's determination.

(3) If a limited liability partnership, not later than 60 days after service of the notice is effected under Subsection (2), does not cure each ground for revocation or demonstrate to the satisfaction of the division that each ground determined by the division does not exist, the division shall administratively revoke the statement of qualification by signing a statement of administrative revocation that recites the grounds for revocation and the effective date of the revocation. The division shall file the statement and serve a copy on the limited liability partnership pursuant to Section 48-1d-116.

(4) An administrative revocation under Subsection (3) affects only a partnership's status as a limited liability partnership and is not an event causing dissolution of the partnership.

(5) The administrative revocation of a statement of qualification of a limited liability partnership does not terminate the authority of its registered agent.

Enacted by Chapter 412, 2013 General Session

48-1d-1103. Reinstatement.

(1) A limited liability partnership whose statement of qualification has been revoked administratively under Section 48-1d-1102 may apply to the division for reinstatement of the statement of qualification not later than two years after the effective date of the revocation. The application must state:

(a) the name of the partnership at the time of the administrative revocation of its statement of qualification and, if needed, a different name that satisfies Section 48-1d-1105;

(b) the address of the principal office of the partnership and information required under Subsection 16-17-203(1);

(c) the effective date of administrative revocation of the partnership's statement of qualification; and

(d) that the grounds for revocation did not exist or have been cured.

(2) To have its statement of qualification reinstated, a partnership whose statement of qualification has been revoked administratively must pay all fees, taxes, and penalties that were due to the division at the time of the administrative revocation and all fees, taxes, and penalties that would have been due to the division while the partnership's statement of qualification was revoked administratively.

(3) If the division determines that the application contains the information required by Subsection (1), is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:

(a) cancel the statement of revocation and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;

(b) file the statement of revocation; and

(c) serve a copy of the statement of revocation on the limited liability partnership.

(4) When reinstatement under this section is effective, the following rules apply:

(a) the reinstatement relates back to and takes effect as of the effective date of the administrative revocation; and

(b) the partnership's status as a limited liability partnership continues as if the revocation had not occurred, except for the rights of a person arising out of an act or omission in reliance on the revocation before the person knew or had notice of the reinstatement are not affected.

Enacted by Chapter 412, 2013 General Session

48-1d-1104. Judicial review of denial of reinstatement.

(1) If the division denies a limited liability partnership's application for reinstatement following administrative revocation of the limited liability partnership's statement of qualification, the division shall serve the limited liability company partnership with notice in a record that explains the reasons for the denial.

(2) A limited liability partnership may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.

Enacted by Chapter 412, 2013 General Session

48-1d-1105. Permitted names.

(1) The name of a partnership that is not a limited liability partnership may not contain the phrase "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The name of a limited liability partnership must contain the words "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(3) Except as otherwise provided in Subsection (6), the name of a limited liability partnership and the name under which a foreign limited liability partnership may register to do business in this state must be distinguishable on the records of the division from any:

(a) name of an existing person whose formation required the filing of a record by the division;

(b) name of a limited liability partnership;

(c) name of a person that is registered to do business in this state by the filing of a record by the division;

(d) name reserved under Section 48-1d-1106 or other law of this state providing for the reservation of a name by the filing of a record by the division;

(e) name registered under Section 48-1d-1107 or other law of this state providing for the registration of a name by the filing of a record by the division; or

(f) assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(4) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (3), the name of the consenting person may be used by the person to which the consent was given.

(5) Except as otherwise provided in Subsection (6), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", or "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.

(6) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (5). In such a case, the person need not change its name pursuant to Subsection (4).

(7) The division may not approve for filing a name that implies that a limited liability partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(8) The authorization to file a certificate under or to reserve or register a limited liability partnership name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(c) create an exclusive right in geographic or generic terms contained within a name.

(9) The name of a limited liability partnership or foreign limited liability partnership may not contain:

(a) the words:

(i) "association";

(ii) "corporation";

(iii) "incorporated";

(iv) "limited liability company";

(v) "limited company";

(vi) "limited partnership"; or

(vii) "Ltd.";

(b) any word or abbreviation that is of like import to the words listed in Subsection (9)(a);

(c) without the written consent of the United States Olympic Committee, the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution".

Enacted by Chapter 412, 2013 General Session

48-1d-1106. Reservation of name.

(1) A person may reserve the exclusive use of a name that complies with Section 48-1d-1105 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for a period of 120 days.

(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer, which states the name and address of the transferee.

Enacted by Chapter 412, 2013 General Session

48-1d-1107. Registration of name.

(1) A foreign limited liability partnership not registered to do business in this state under Part 12, Foreign Limited Liability Partnerships, may register its name, or an alternate name adopted pursuant to Section 48-1d-1206, if the name is distinguishable on the records of the division from the names that are not available under Section 48-1d-1105.

(2) To register its name or an alternate name adopted pursuant to Section 48-1d-1206, a foreign limited liability partnership must deliver to the division for filing an application stating the foreign limited liability partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-1d-1206. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective for one year after the date of registration.

(4) A foreign limited liability partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews

the registration for a succeeding one-year period.

(5) A foreign limited liability partnership whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

Enacted by Chapter 412, 2013 General Session

48-1d-1108. Registered agent.

(1) Each limited liability partnership and each registered foreign limited liability partnership shall designate in accordance with Subsection 16-17-203(1) and maintain a registered agent in this state.

(2) A limited liability partnership or registered foreign limited liability partnership may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-1d-1109. Annual report for division.

(1) Each limited liability partnership and registered foreign limited liability partnership shall deliver to the division for filing an annual report that states:

(a) the name of the limited liability partnership or foreign limited liability partnership;

(b) the information required under Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

(d) the name of at least one partner; and

(e) in the case of a foreign limited liability partnership, its jurisdiction of formation and any alternate name adopted under Subsection 48-1d-1206(1).

(2) Information in an annual report must be current as of the date the report is signed by the limited liability partnership or registered foreign limited liability partnership.

(3) A report must be delivered to the division for each year following the calendar year in which the limited liability partnership's statement of qualification became effective or the registered foreign limited liability partnership registered to do business in this state:

(a) in the case of a limited liability partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability partnership statement of qualification became effective; and

(b) in the case of a registered foreign limited liability partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability partnership registered to do business in this state.

(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited liability partnership or registered foreign limited liability partnership in a record and return the report for correction.

(5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is

considered a statement of change under Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-1d-1201. Governing law.

(1) The law of the jurisdiction in which the statement of qualification or equivalent filing of a foreign limited liability partnership is filed governs:

(a) the internal affairs of the foreign limited liability partnership; and

(b) the liability of a partner as partner for a debt, obligation, or other liability of the foreign limited liability partnership.

(2) A foreign limited liability partnership is not precluded from registering to do business in this state because of any difference between the law of this state and the jurisdiction under which the foreign limited liability partnership's statement of qualification or equivalent filing is filed.

(3) Registration of a foreign limited liability partnership to do business in this state does not authorize the foreign limited liability partnership to engage in any business or exercise any power that a domestic limited liability partnership may not engage in or exercise in this state as a limited liability partnership.

(4) (a) The division may permit a tribal limited liability partnership to apply for authority to transact business in the state in the same manner as a foreign limited liability partnership formed in another state.

(b) If a tribal limited liability partnership elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability partnership shall be treated in the same manner as a foreign limited liability partnership formed under the laws of another state.

Enacted by Chapter 412, 2013 General Session

48-1d-1202. Registration to do business in this state.

(1) A foreign limited liability partnership may not do business in this state until it registers with the division under this part.

(2) A foreign limited liability partnership doing business in this state may not maintain an action or proceeding in this state unless it has registered to do business in this state.

(3) The failure of a foreign limited liability partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a partner of a foreign limited liability partnership is not waived solely because the foreign limited liability partnership does business in this state without registering to do business in this state.

(5) Subsections 48-1d-1201(1) and (2) apply even if a foreign limited liability partnership fails to register under this part.

Enacted by Chapter 412, 2013 General Session

48-1d-1203. Foreign registration statement.

To register to do business in this state, a foreign limited liability partnership must deliver a foreign registration statement to the division for filing. The statement must state:

(1) the name of the foreign limited liability partnership and, if the name does not comply with Section 48-1d-1105, an alternate name adopted pursuant to Subsection 48-1d-1206(1);

(2) that the limited liability partnership is a foreign limited liability partnership;

(3) the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;

(4) the street and mailing addresses of the foreign limited liability partnership's principal office and, if the law of the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed requires the foreign limited liability partnership to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the information required by Subsection 16-17-203(1).

Enacted by Chapter 412, 2013 General Session

48-1d-1204. Amendment of foreign registration statement.

A registered foreign limited liability partnership shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the foreign limited liability partnership;

(2) the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;

(3) an address required by Subsection 48-1d-1203(4); or

(4) the information required by Subsection 48-1d-1203(5).

Enacted by Chapter 412, 2013 General Session

48-1d-1205. Activities not constituting doing business.

(1) Activities of a foreign limited liability partnership which do not constitute doing business in this state under this part include:

(a) maintaining, defending, mediating, arbitrating, and settling an action or proceeding;

(b) carrying on any activity concerning its internal affairs, including meetings of its partners;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign limited liability partnership or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in

property securing the debts, and holding, protecting, or maintaining property;

(i) conducting an isolated transaction that is not in the course of similar transactions;

(j) owning, without more, property; and

(k) doing business in interstate commerce.

(2) A person does not do business in this state solely by being a partner of a foreign limited liability partnership that does business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under law of this state other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-1d-1206. Noncomplying name of foreign limited liability partnership.

(1) A foreign limited liability partnership whose name does not comply with Section 48-1d-1105 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-1d-1105. A registered foreign limited liability partnership that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign partnership shall do business in this state under:

(a) the alternate name;

(b) the foreign limited liability partnership's name, with the addition of its jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed; or

(c) an assumed or fictitious name the foreign limited liability partnership is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(2) If a registered foreign limited liability partnership changes its name to one that does not comply with Section 48-1d-1105, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-1d-1105.

Enacted by Chapter 412, 2013 General Session

48-1d-1207. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited liability partnership that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

Enacted by Chapter 412, 2013 General Session

48-1d-1208. Withdrawal on dissolution or conversion to nonfiling entity

other than limited liability partnership.

(1) A registered foreign limited liability partnership that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:

(a) in the case of a foreign limited liability partnership that has completed winding up:

(i) its name and the jurisdiction in which the foreign limited liability partnership's statement of qualification is filed; and

(ii) that the foreign limited liability partnership surrenders its registration to do business in this state; and

(b) in the case of a foreign limited liability partnership that has converted:

(i) the name of the converting foreign limited liability partnership and the jurisdiction in which its statement of qualification is filed;

(ii) the type of entity to which the foreign limited liability partnership has converted and its jurisdiction of formation;

(iii) that the converted entity surrenders the converting foreign limited liability partnership's registration to do business and revokes the authority of the converting foreign limited liability partnership's registered agent to act as registered agent in this state on behalf of the foreign limited liability partnership or the converted entity; and

(iv) a mailing address to which service of process may be made under Subsection (2).

(2) After a withdrawal under this section of a foreign limited liability partnership that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-1d-1209. Transfer of registration.

(1) When a registered foreign limited liability partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:

(a) the name of the registered foreign limited liability partnership before the merger or conversion;

(b) that before the merger or conversion the registration pertained to a foreign limited liability partnership;

(c) the name of the applicant foreign entity into which the foreign limited liability partnership has merged or to which it has been converted, and, if the name does not comply with Section 48-1d-1105, an alternate name adopted pursuant to Subsection 48-1d-1206(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;

(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of that entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(f) the information required under Subsection 16-17-203(1).

(2) When an application for transfer of registration takes effect, the registration of the foreign limited liability partnership to do business in this state is transferred without interruption to the foreign entity into which the foreign limited liability partnership has merged or to which it has been converted.

Enacted by Chapter 412, 2013 General Session

48-1d-1210. Termination of registration.

(1) The division may terminate the registration of a registered foreign limited liability partnership in the manner provided in Subsections (2) and (3) if the foreign limited liability partnership does not:

(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;

(b) deliver to the division for filing, not later than 60 days after the due date, the annual report required under Section 48-1d-1109;

(c) have a registered agent as required by Section 48-1d-1108; or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.

(2) The division may terminate the registration of a registered foreign limited liability partnership by:

(a) filing a notice of termination or noting the termination in the records of the division; and

(b) delivering a copy of the notice or the information in the notation to the foreign limited liability partnership's registered agent, or if the foreign limited liability partnership does not have a registered agent, to the foreign limited liability partnership's principal office.

(3) A notice or information in a notation under Subsection (2) must include:

(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and

(b) the grounds for termination under Subsection (1).

(4) The authority of a registered foreign limited liability partnership to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited liability partnership cures each ground for termination stated in the notice or notation. If the foreign limited liability partnership cures each ground, the division shall file a record so stating.

Enacted by Chapter 412, 2013 General Session

48-1d-1211. Withdrawal of registration of registered foreign limited liability partnership.

(1) A registered foreign limited liability partnership may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:

(a) the name of the foreign limited liability partnership and the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;

(b) that the foreign limited liability partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign limited liability partnership revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) an address to which service of process may be made under Subsection (2).

(2) After the withdrawal of the registration of a foreign limited liability partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-1d-1212. Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability partnership from doing business in this state in violation of this part.

Enacted by Chapter 412, 2013 General Session

48-1d-1301. Definitions.

As used in this part:

(1) "Professional services partnership" means a limited liability partnership organized in accordance with this part to provide professional services.

(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability partnership is organized to provide.

Enacted by Chapter 412, 2013 General Session

48-1d-1302. Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

Enacted by Chapter 412, 2013 General Session

48-1d-1303. Name limitations.

(1) The name of a domestic professional services partnership and of a foreign

professional services partnership authorized to transact business in this state, in addition to complying with Sections 48-1d-1105 and 48-1d-1206:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by Section 48-1d-1304; and

(b) must conform with any rule made by the regulating board having jurisdiction over a professional service to be rendered by the professional service partnership.

(2) Sections 48-1d-1105 and 48-1d-1206 do not prevent the use of a name otherwise prohibited by those sections if the name is:

(a) the personal name of an individual partner or individual former partner of the professional services partnership; or

(b) the name of an individual who was associated with a predecessor of the professional services partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-1304. Providing a professional service.

(1) Subject to Section 48-1d-1305, a professional services partnership may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services partnership to be licensed to perform a service for the professional services company if a license is not otherwise required;

(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a partner, employee, or agent of a professional services partnership; or

(c) prohibit an individual licensed in another state from providing a professional service for a professional services partnership in this state if not prohibited by the regulating board.

Enacted by Chapter 412, 2013 General Session

48-1d-1305. Limit of one profession.

(1) A professional services partnership organized to provide a professional service under this part may provide only:

(a) one specific type of professional service; and

(b) services ancillary to the professional service described in Subsection (1)(a).

(2) A professional services partnership organized to provide a professional service under this part may not engage in a business other than to provide:

(a) the professional service that it was organized to provide; and

(b) services ancillary to the professional service described in Subsection (2)(a).

(3) Notwithstanding Subsections (1) and (2), a professional services partnership may:

(a) own real and personal property necessary or appropriate for providing the type of professional service it was organized to provide; and

(b) invest the professional services partnership's money in one or more of the

following:
(i) real estate;
(ii) mortgages;
(iii) stocks;
(iv) bonds; or
(v) another type of investment.

Amended by Chapter 189, 2014 General Session

48-1d-1306. Activity limitations.

A professional services partnership may not do anything that an individual licensed to practice the profession that the professional services partnership is organized to provide is prohibited from doing.

Enacted by Chapter 412, 2013 General Session

48-1d-1307. This part does not limit regulating board.

This part does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:

(1) is a partner or employee of a professional services partnership; or

(2) provides the professional service or engages in the practice of the profession through a professional services partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-1308. Partner of a professional services partnership.

A professional services partnership organized to provide a professional service:

(1) may include a partner or employee who is authorized under the laws of the jurisdiction where the partner or employee resides to provide a similar professional service;

(2) may include a partner who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service; and

(3) may render a professional service in this state only through a partner or employee who is licensed or registered by this state to render the professional service.

Enacted by Chapter 412, 2013 General Session

48-1d-1309. Restriction on transfer by partner.

(1) Except as provided in Subsections (2) and (3), a partner of a professional services partnership may sell or transfer the partner's interest in the professional services partnership only to:

(a) the professional services partnership; or

(b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional

services partnership is organized, or who otherwise satisfies the requirements of Subsection 48-1d-1308(1) or (2).

(2) Upon the death or incapacity of a partner of a professional services partnership, the partner's interest in the professional services partnership may be transferred to the personal representative or estate of the deceased or incapacitated partner.

(3) The person to whom an interest is transferred under Subsection (2) may continue to hold the interest for a reasonable period, but may not participate in a decision concerning the providing of a professional service.

Enacted by Chapter 412, 2013 General Session

48-1d-1310. Purchase of interest upon death, incapacity, or disqualification of member.

(1) Subject to this part, one or more of the following may provide for the purchase of a partner's interest in a professional services partnership upon the death, incapacity, or disqualification of the partner:

(a) the partnership agreement; or

(b) a private agreement.

(2) In the absence of a provision described in Subsection (1), a professional services partnership shall purchase the interest of a partner who is deceased, incapacitated, or no longer qualified to own an interest in the professional services partnership within 90 days after the day on which the professional services partnership is notified of the death, incapacity, or disqualification.

(3) If a professional services partnership purchases a partner's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(4) If a professional services partnership fails to purchase a partner's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services partnership is located to enforce Subsection (2):

(a) the personal representative of a deceased partner;

(b) the guardian or conservator of an incapacitated partner; or

(c) the disqualified partner.

(5) A court in which an action is brought under Subsection (4) may:

(a) award the person bringing the action the reasonable fair market value of the interest; or

(b) within its jurisdiction, order the liquidation of the professional services partnership.

(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Enacted by Chapter 412, 2013 General Session

48-1d-1401. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

Enacted by Chapter 412, 2013 General Session

48-1d-1402. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 412, 2013 General Session

48-1d-1403. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 412, 2013 General Session

48-1d-1404. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Enacted by Chapter 412, 2013 General Session

48-1d-1405. Application to existing relationships.

(1) Before January 1, 2016, this chapter governs only:

(a) a partnership formed on or after January 1, 2014; and

(b) except as otherwise provided in Subsection (3), a partnership formed before January 1, 2014, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all partnerships.

(3) With respect to a partnership that elects pursuant to Subsection (1)(b) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the partnership's partners to third parties apply:

(a) before January 1, 2016, to:

(i) a third party that had not done business with the partnership in the year before the election took effect; and

(ii) a third party that had done business with the partnership in the year before

the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after January 1, 2016, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under Subsection (3)(a)(ii).

Enacted by Chapter 412, 2013 General Session

48-2a-100. Scope of chapter.

Until this chapter is repealed January 1, 2016, this chapter applies only to a limited partnership formed on or before December 31, 2013, that has not elected to be governed by Chapter 2e, Utah Uniform Limited Partnership Act, as provided in Section 48-2e-1205.

Enacted by Chapter 412, 2013 General Session

48-2a-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means:

(a) a certificate referred to in Section 48-2a-201; and

(b) a certificate as amended or restated.

(2) "Contribution" means any of the following that a partner contributes to a limited partnership in the partner's capacity as a partner:

(a) cash;

(b) property;

(c) a service rendered; or

(d) a promissory note or other binding obligation to:

(i) contribute cash;

(ii) contribute property; or

(iii) perform a service.

(3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 48-2a-402.

(5) "Foreign limited partnership" means a partnership:

(a) formed under the laws of a state other than this state; and

(b) having as partners:

(i) one or more general partners; and

(ii) one or more limited partners.

(6) "General partner" means a person who is:

(a) admitted to a limited partnership as a general partner in accordance with the partnership agreement; and

(b) named in the certificate of limited partnership as a general partner.

(7) "Limited partner" means a person who is admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership:

(a) formed by two or more persons under the laws of this state; and

(b) having:

(i) one or more general partners; and

(ii) one or more limited partners.

(9) "Partner" means a limited or a general partner.

(10) "Partnership agreement" means a valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(11) "Partnership interest" means:

(a) a partner's share of the profits and losses of a limited partnership; and

(b) the right to receive distributions of partnership assets.

(12) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Subject entity" means a corporation, business trust or association, a real estate investment trust, a common-law trust, or another unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.

(15) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(16) "Tribal limited partnership" means a limited partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

Amended by Chapter 249, 2008 General Session

48-2a-102. Name.

(1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) shall contain the terms:

(i) "limited partnership";

(ii) "limited";

(iii) "L.P."; or

(iv) "Ltd.";

(b) may not contain the name of a limited partner unless:

(i) it is the name of a general partner;

(ii) it is the corporate name of a corporate general partner; or

(iii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain:

(i) the words:

(A) "association";

(B) "corporation"; or

(C) "incorporated";

(ii) any abbreviation of a word listed in this Subsection (1)(c); or

(iii) any word or abbreviation that is of like import to the words listed in Subsection (1)(c)(i) in any other language;

(d) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(e) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution."

(2) (a) A person or entity other than a limited partnership formed or registered under this title may not use in its name in this state any of the terms:

(i) "limited";

(ii) "limited partnership";

(iii) "Ltd."; or

(iv) "L.P."

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

(A) "corporation";

(B) "incorporated"; or

(C) any abbreviation of a word listed in this Subsection (2)(b)(i);

(ii) a limited liability company may use in its name in this state the terms:

(A) "limited";

(B) "limited company";

(C) "L.C.";

(D) "L.L.C.";

(E) "LC"; or

(F) "LLC"; and

(iii) a limited liability partnership may use the terms "limited liability partnership," "L.L.P.," or "LLP" in the manner allowed in Section 48-1-45.

(3) Except as authorized by Subsection (4), the name of a limited partnership must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the corporate name of any corporation incorporated or authorized to transact business in this state;

(c) any limited partnership name reserved under this chapter;

(d) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(e) any fictitious name adopted by a foreign corporation or limited partnership authorized to transact business in this state because its real name is unavailable;

(f) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(g) any assumed business name, trademark, or service mark registered by the division.

(4) (a) A limited partnership may apply to the division for approval to file its certificate under, or to reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve of the name for which application is made under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P."; or

(vii) "Ltd.";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization;

(f) differences between singular and plural forms of words for a limited partnership:

(i) formed in or registered as a foreign limited partnership in this state on or after May 4, 1998; or

(ii) that changes its name on or after May 4, 1998;

(g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(i) the sequence of letters or numbers is identical; and

(ii) the limited partnership:

(A) is formed in or registered as a foreign limited partnership in this state on or after May 3, 1999; or

(B) changes its name on or after May 3, 1999; or

(h) differences in abbreviations, for a limited partnership:

(i) formed in or registered as a foreign limited partnership in this state on or after May 1, 2000; or

(ii) that changes its name on or after May 1, 2000.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that the limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) (a) The requirements of Subsection (1)(e) do not apply to a limited partnership that is formed in or registered as a foreign limited partnership in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any limited partnership formed in or registered as a foreign limited partnership in this state shall comply with the requirements of Subsection (1)(e).

Amended by Chapter 218, 2010 General Session

48-2a-103. Reservation of name.

(1) The exclusive right to a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and intending to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(2) The reservation shall be made by filing with the division an application, executed under penalty of perjury by the applicant, to reserve a specified name. If the division finds that the name is available for use by a domestic or a foreign limited partnership, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days. The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Amended by Chapter 189, 1991 General Session

48-2a-103.5. Limited partnership name -- Limited rights.

The authorization to file a certificate under or to reserve or register a limited partnership name as granted by the division does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Enacted by Chapter 189, 1991 General Session

48-2a-105. Records to be kept.

Each limited partnership shall keep at its principal place of business, as specified in the certificate of limited partnership required by Section 48-2a-201, the following:

(1) a current list in alphabetical order of the full name and last known business address of each partner, separately identifying the general partners and the limited partners;

(2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with the executed copies of any powers of attorney pursuant to which the certificate has been executed;

(3) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(4) copies of any then effective written limited partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) unless contained in a written partnership agreement, a writing setting out:

(a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(b) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(c) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any of the partner's contribution; and

(d) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

Amended by Chapter 189, 1991 General Session

48-2a-106. Nature of business.

A limited partnership may carry on any business, except as otherwise prohibited by applicable provision of the Utah Code.

Enacted by Chapter 233, 1990 General Session

48-2a-107. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Enacted by Chapter 233, 1990 General Session

48-2a-108. Conversion of certain entities to a limited partnership.

Any subject entity may convert to a limited partnership under this chapter by complying with Section 48-2a-111 and filing with the division:

(1) articles of conversion that satisfy the requirements of Section 48-2a-109; and

(2) a certificate of limited partnership that satisfies the requirements of Section 48-2a-201.

Enacted by Chapter 260, 2001 General Session

48-2a-109. Articles of conversion.

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the domestic limited partnership as set forth in its certificate of limited partnership filed in accordance with Section 48-2a-201;

(4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic limited partnership if it is not to be effective upon the filing of the articles of conversion and the certificate of limited partnership; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Enacted by Chapter 260, 2001 General Session

48-2a-110. Effect of conversion.

(1) Upon the filing with the division of the articles of conversion and the certificate of limited partnership or, if applicable, upon the future effective date or time of the articles of conversion and the certificate of limited partnership, the subject entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2a-201, the existence of the limited partnership shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic limited partnership shall not affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic limited partnership or the personal liability of any person incurred prior to the conversion.

(3) When a conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject

entity remain vested in the domestic limited partnership to which the subject entity has converted and shall be the property of the domestic limited partnership and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic limited partnership to which the subject entity has converted and may be enforced against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic limited partnership.

(4) Unless otherwise agreed, or as required under applicable law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not constitute a dissolution of the subject entity but shall constitute a continuation of the existence of the converting subject entity in the form of a domestic limited partnership. When any subject entity has been converted to a domestic limited partnership pursuant to this part, the domestic limited partnership shall thereafter, for all purposes of the laws of this state, be considered to be the same entity as the converting subject entity.

Enacted by Chapter 260, 2001 General Session

48-2a-111. Approval of conversion.

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate, and the new partnership agreement, if any, for the domestic limited partnership must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving such conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new partnership agreement.

Enacted by Chapter 260, 2001 General Session

48-2a-112. No limitation on other changes.

The provisions of Sections 48-2a-108 and 48-2a-111 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other entity in this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law.

Enacted by Chapter 260, 2001 General Session

48-2a-113. Approval of limited partnership conversion to subject entity.

(1) A domestic limited partnership may convert to any subject entity upon the authorization of the conversion in accordance with this section.

(a) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement.

(b) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as specified in the partnership agreement for authorizing a merger that involves the partnership as a constituent party to the merger.

(c) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion must be authorized by unanimous consent of all partners.

(2) A converted domestic limited partnership shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic limited partnership, as well as the debts, liabilities, and duties of the domestic limited partnership, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic limited partnership has converted.

(3) Unless otherwise agreed, the conversion of a domestic limited partnership to another entity, pursuant to this section, shall not require the domestic limited partnership to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic limited partnership to a subject entity under this section, all interests in, or securities of or rights in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic limited partnership is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Enacted by Chapter 260, 2001 General Session

48-2a-201. Certificate of limited partnerships.

(1) In order to form a limited partnership a certificate of limited partnership must be executed and filed with the division, setting forth:

(a) the name of the limited partnership;

(b) the information required by Subsection 16-17-203(1);

(c) the name and business address of each general partner;

(d) (i) the latest date upon which the limited partnership is to dissolve, if the duration of the limited partnership is to be limited; or

(ii) a statement to the effect that the limited partnership is to have perpetual duration; and

(e) any other matters the general partners determine to include.

(2) A limited partnership is formed:

(a) at the time of the filing of the certificate of limited partnership with the division as evidenced by the stamped copy returned by the division pursuant to Subsection

48-2a-206(1); or

(b) at any later time specified in the certificate of limited partnership.

Amended by Chapter 364, 2008 General Session

48-2a-202. Amendment to certificate.

(1) (a) A certificate of limited partnership is amended by filing a certificate of amendment with the division.

(b) A certificate of amendment filed under this Subsection (1) shall state:

(i) the name of the limited partnership;

(ii) the date of filing the certificate; and

(iii) the amendment to the certificate.

(2) An amendment to a certificate of limited partnership shall be filed within 60 days after the day the limited partnership continues business under Section 48-2a-801 after an event of withdrawal of a general partner.

(3) A general partner who knows or reasonably should know that any statement in a certificate of limited partnership or a certificate of amendment to a certificate of limited partnership was false at the time the certificate was executed making the certificate inaccurate in any respect, shall promptly amend the certificate.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(5) A person may not be held liable because an amendment to a certificate of limited partnership has not been filed under Subsection (2) if the amendment is filed within the 60 days specified in Subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Amended by Chapter 193, 2002 General Session

48-2a-202.5. Actions not requiring amendment.

Notwithstanding Section 48-2a-202, a limited partnership is not required to amend the limited partnership's certificate of limited partnership to report a change in the information required by Subsection 16-17-203(1).

Amended by Chapter 364, 2008 General Session

48-2a-203. Voluntary cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed with the division and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of its certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate determine.

Amended by Chapter 189, 1991 General Session

48-2a-203.5. Involuntary dissolution of certificate.

(1) A certificate of limited partnership may be canceled involuntarily by a decree of a district court having competent jurisdiction upon petition by the director of the division, or by a party in interest who shall have standing to bring such an action, when it is established that:

(a) the limited partnership procured the issuance of a stamped copy of its certificate of limited partnership or the execution of the certificate of limited partnership through fraud, in which case the certificate shall be canceled as of the date of its filing; or

(b) the limited partnership has continually exceeded or abused the authority conferred upon it by law or by the partnership agreement.

(2) A domestic limited partnership or a foreign limited partnership registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) The division shall mail a notice of delinquency of a delinquent limited partnership to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one general partner of the limited partnership.

(b) The notice of delinquency required under Subsection (3)(a) shall state:

(i) the nature of the delinquency; and

(ii) that the limited partnership shall be dissolved unless within 60 days of the mailing of the notice of delinquency it corrects the delinquency.

(c) The division shall include with the notice of delinquency any forms necessary to correct the delinquency.

(4) (a) If the limited partnership does not remove the delinquency within 60 days from the date the division mails the notice of delinquency, the limited partnership's certificate or registration shall be dissolved involuntarily by the director of the division effective on the date specified in Subsection (4)(c).

(b) If a limited partnership's certificate or registration is dissolved under Subsection (4)(a), the division shall mail a certificate of dissolution to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one partner of the limited partnership.

(c) A limited partnership's date of dissolution is five days from the date the division mailed the certificate of dissolution under Subsection (4)(b).

(d) A dissolved limited partnership may not be reinstated except as set forth in Subsection (5).

(e) On the date of dissolution, any assumed names filed on behalf of the dissolved limited partnership under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(f) Notwithstanding Subsection (4)(e), the name of a dissolved limited

partnership and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (4)(e), if the limited partnership that is dissolved is reinstated in accordance with this section, the registration of the name of the limited partnership and any assumed names filed on its behalf are reinstated back to the date of dissolution.

(5) Any limited partnership whose certificate or registration has been dissolved under this section or Section 48-2a-203 may be reinstated within two years following the date of dissolution upon:

(a) application; and

(b) payment of:

(i) all penalties; and

(ii) all reinstatement fees.

(6) A limited partner of a limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership having had its limited partnership certificate or registration dissolved.

(7) A limited partnership that has had its certificate or registration dissolved may not maintain any action, suit, or proceeding in any court of this state until it has reinstated its certificate or registration following dissolution.

(8) If the division denies a limited partnership's application for reinstatement following a dissolution under this section, the division shall mail the limited partnership written notice:

(a) setting forth the reasons for denying the application; and

(b) stating that the limited partnership has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(9) A notice or certificate mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the limited partnership corporation, if the notice is required to be mailed to the registered agent; or

(ii) the partner of the limited partnership that is mailed the notice, if the notice is required to be mailed to a partner of the limited partnership.

Amended by Chapter 382, 2008 General Session

48-2a-204. Execution of certificates.

(1) Each certificate required by this chapter to be filed with the division shall be executed in the following manner:

(a) an original certificate of limited partnership must be signed under penalty of perjury by all general partners;

(b) a certificate of amendment must be signed under penalty of perjury by at

least one general partner and by each other general partner designated in the certificate as a new general partner; and

(c) a certificate of cancellation must be signed under penalty of perjury by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

Enacted by Chapter 233, 1990 General Session

48-2a-205. Execution by judicial act.

If a person required by Section 48-2a-204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition a district court having competent jurisdiction to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the division to record an appropriate certificate.

Enacted by Chapter 233, 1990 General Session

48-2a-206. Filing with the division.

(1) An original and one copy of the certificate of limited partnership, and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the division. A person who executes a certificate as an attorney-in-fact or fiduciary need not exhibit evidence of the person’s authority as a prerequisite to filing. Unless the division finds that any certificate does not conform to law as to its form, upon receipt of all filing fees established under Section 63J-1-504, it shall:

(a) place on the original and the copy a stamp or seal indicating the time, day, month, and year of the filing, the director of the division's signature, and the division's seal, or facsimiles thereof, and the name of the division;

(b) file the signed original in its office; and

(c) return the stamped copy to the person who filed it or the person’s representative.

(2) The stamped copy of the certificate of limited partnership and of any certificate of amendment or cancellation shall be conclusive evidence that all conditions precedent required for the formation, amendment, or cancellation of a limited partnership have been complied with and the limited partnership has been formed, amended, or canceled under this chapter, except with respect to an action for involuntary cancellation of the limited partnership's certificate for fraud under Subsection 48-2a-203.5(1)(a).

(3) Upon the filing of a certificate of amendment or judicial decree of amendment with the division, the certificate of limited partnership is amended as set forth in the certificate of amendment or judicial decree of amendment, and upon filing a certificate of cancellation, or of a judicial decree of cancellation, the division shall cancel the certificate of limited partnership effective as of the date the cancellation was filed or

as of the date specified in the decree, unless a later effective date is specified in the cancellation.

Amended by Chapter 183, 2009 General Session

48-2a-207. Liability for false statement in certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) any person who executed the certificate, whether in his own name or on behalf of another as attorney-in-fact, who knew, or reasonably should have known, that the statement was false at the time the certificate was executed; and

(2) any general partner who at any time knew, or reasonably should have known, that the statement was false at the time the certificate was executed or knew or reasonably should have known that any arrangement or other fact described in the certificate had changed, making the statement inaccurate in any respect, if that general partner failed to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 48-2a-202 or 48-2a-203, within 30 days of the date on which the general partner knew, or reasonably should have known, that the statement was false or that the change had occurred.

Amended by Chapter 30, 1992 General Session

48-2a-208. Scope of notice.

The fact that a certificate of limited partnership or amendment to a certificate of limited partnership is on file in the office of the division is notice that the partnership is a limited partnership and the persons designated as general partners are general partners, but it is not notice of any other fact.

Amended by Chapter 189, 1991 General Session

48-2a-209. Delivery of certificates to limited partners.

Upon the return by the division pursuant to Section 48-2a-206 of a stamped copy of any certificate, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

Enacted by Chapter 233, 1990 General Session

48-2a-210. Annual report.

(1) (a) Each domestic limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file an annual report with the division:

(i) during the month of its anniversary date of formation, in the case of domestic limited partnerships; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited partnerships authorized to

transact business in this state.

(b) The annual report required by Subsection (1)(a) shall set forth:

(i) the name of the limited partnership;

(ii) the state or country under the laws of which it is formed;

(iii) the information required by Subsection 16-17-203(1);

(iv) any change of address of a general partner; and

(v) a change in the persons constituting the general partners.

(2) (a) The annual report required by Subsection (1) shall:

(i) be made on forms prescribed and furnished by the division; and

(ii) contain information that is given as of the date of execution of the annual report.

(b) The annual report forms shall include a statement of notice to the limited partnership that failure to file the annual report will result in the dissolution of:

(i) the limited partnership, in the case of a domestic limited partnership; or

(ii) its registration, in the case of a foreign limited partnership authorized to transact business in this state.

(c) The annual report shall be signed by:

(i) any general partner under penalty of perjury; and

(ii) if the registered agent has changed since the last annual report or other appointment of a registered agent, the new registered agent.

(3) (a) If the division finds that the annual report required by Subsection (1) conforms to the requirements of this chapter, it shall file the annual report.

(b) If the division finds that the annual report required by Subsection (1) does not conform to the requirements of this chapter, the division shall mail the report first-class postage prepaid to the limited partnership at the addresses set forth in the certificate for any necessary corrections.

(c) If the division returns an annual report in accordance with Subsection (3)(b), the penalties for failure to file the annual report within the time prescribed in Section 48-2a-203.5 do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited partnership.

Amended by Chapter 364, 2008 General Session

48-2a-301. Admission of additional limited partners.

(1) A person becomes a limited partner on the later of:

(a) the date the original certificate of limited partnership is filed; or

(b) the date stated in the records of the limited partnership as the date that person becomes a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership or in the case of an assignee of a partnership interest of a partner who does not have authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all

partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon the exercise of that authority and compliance with any conditions limiting the grant or exercise of the authority.

Amended by Chapter 189, 1991 General Session

48-2a-302. Voting.

Subject to Section 48-2a-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

Enacted by Chapter 233, 1990 General Session

48-2a-303. Liability to third parties.

(1) Except as provided in Subsection (4), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of Subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a

general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificate of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to Section 48-2a-803; or

(h) exercising any right or power permitted limited partners under this chapter and not specifically enumerated in this subsection.

(3) The enumeration in Subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Subsection 48-2a-102(1)(b) is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Amended by Chapter 189, 1991 General Session

48-2a-304. Person erroneously believing himself to be a limited partner.

(1) Except as provided in Subsection (2), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future participation in the profits and losses of the enterprise by executing and filing with the division a certificate declaring withdrawal under this section; withdrawal under this subsection is without prejudice to the person's right to receive the return of his unreturned contribution.

(2) A person who makes a contribution under the circumstance described in Subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate is filed to show withdrawal or before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction and acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person.

Amended by Chapter 189, 1991 General Session

48-2a-305. Inspection of records -- Right to information.

(1) Each limited partner has the right to:

(a) inspect and copy any of the partnership records required to be maintained by

Section 48-2a-105;

(b) obtain from the general partners from time to time upon reasonable demand:

(i) a copy of any of the partnership records required to be maintained by Section 48-2a-105;

(ii) true and full information regarding the state of the business and financial condition of the limited partnership;

(iii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) other information regarding the affairs of the limited partnership as is just and reasonable.

(2) Unless otherwise provided in the partnership agreement, the cost of providing the information described in this section shall be the responsibility of the partnership.

Enacted by Chapter 233, 1990 General Session

48-2a-401. Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

Enacted by Chapter 233, 1990 General Session

48-2a-402. Events of withdrawal.

Except as approved by the specific written consent of all partners at the time thereof with respect to Subsections (4) through (10), a person ceases to be a general partner of a limited partnership upon the happening of any of the following events of withdrawal:

(1) The general partner withdraws from the limited partnership as provided in Section 48-2a-602.

(2) The general partner ceases to be a member of the limited partnership as provided in Section 48-2a-702.

(3) The general partner is removed as a general partner in accordance with the partnership agreement.

(4) Unless otherwise provided in the partnership agreement, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated as bankrupt or insolvent;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding described in Subsection (4)(d); or

(f) seeks, consents to, or acquiesces in the appointment of a trustee, receiver,

or liquidator of the general partner or of all or any substantial part of his properties.

(5) Unless otherwise provided in the partnership agreement, if within 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated.

(6) In the case of a general partner who is a natural person:

(a) his death; or

(b) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate.

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the distribution by the trustee of the trust's entire interest in the partnership, but not merely the substitution of a new trustee.

(8) In the case of a general partner that is a separate partnership, the dissolution and completion of winding up of the separate partnership.

(9) In the case of a general partner that is a corporation, the issuance of a certificate of dissolution or its equivalent, or of a judicial decree of dissolution, for the corporation or the revocation of its charter.

(10) In the case of a person who is acting as a general partner by virtue of being a fiduciary of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Amended by Chapter 324, 2010 General Session

48-2a-403. General powers and liabilities.

(1) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(2) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Enacted by Chapter 233, 1990 General Session

48-2a-404. Contributions by general partners.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the

restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a limited partner to the extent of his participation in the partnership as a limited partner.

Amended by Chapter 189, 1991 General Session

48-2a-405. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

Enacted by Chapter 233, 1990 General Session

48-2a-501. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Enacted by Chapter 233, 1990 General Session

48-2a-502. Liability for contribution.

(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the stated contribution which has not been made.

(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

Enacted by Chapter 233, 1990 General Session

48-2a-503. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing,

profits, and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Enacted by Chapter 233, 1990 General Session

48-2a-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be made among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Amended by Chapter 189, 1991 General Session

48-2a-601. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Amended by Chapter 189, 1991 General Session

48-2a-602. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

Enacted by Chapter 233, 1990 General Session

48-2a-603. Withdrawal of limited partners.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership required to be kept under Section 48-2a-105.

Enacted by Chapter 233, 1990 General Session

48-2a-604. Distribution upon withdrawal.

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

Amended by Chapter 189, 1991 General Session

48-2a-605. Distribution in kind.

Except as provided in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from the limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

Enacted by Chapter 233, 1990 General Session

48-2a-606. Right to distribution.

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

Enacted by Chapter 233, 1990 General Session

48-2a-607. Limitations on distributions.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

Enacted by Chapter 233, 1990 General Session

48-2a-608. Liability upon return of contribution.

(1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(3) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept under Section 48-2a-105, of his contribution to the extent that it has been made, less any previous return of contributions.

Amended by Chapter 189, 1991 General Session

48-2a-701. Nature of partnership interest.

A partnership interest is personal property.

Enacted by Chapter 233, 1990 General Session

48-2a-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Except as set forth in Subsection 48-2a-801(4), an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all of his partnership interest.

Amended by Chapter 189, 1991 General Session

48-2a-703. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent it is the beneficiary of such a charging order, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

Amended by Chapter 189, 1991 General Session

48-2a-704. Right of assignee to become limited partner.

(1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement and the conditions set forth in the partnership agreement are met; or

(b) all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles V and VI of this chapter. However, the assignee is

not obligated for any other liabilities unknown to the assignee at the time he became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 48-2a-207, 48-2a-502, and 48-2a-608.

Amended by Chapter 189, 1991 General Session

48-2a-705. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any authority the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Amended by Chapter 189, 1991 General Session

48-2a-801. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) at the time specified in the certificate of limited partnership;

(2) upon the happening of events specified in writing in the partnership agreement;

(3) written consent of all partners;

(4) an event of withdrawal of a general partner unless:

(a) at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so; or

(b) within 90 days after the event of withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(5) entry of a decree of judicial dissolution under Section 48-2a-802.

Amended by Chapter 189, 1991 General Session

48-2a-802. Judicial dissolution.

On application by or for a partner or the director of the division, a district court having competent jurisdiction may decree dissolution of the limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement or for failure to comply with the requirements of this chapter.

Enacted by Chapter 233, 1990 General Session

48-2a-803. Winding up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but a district court having competent jurisdiction may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

Enacted by Chapter 233, 1990 General Session

48-2a-804. Distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 48-2a-601 or 48-2a-604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 48-2a-601 or 48-2a-604; and

(3) except as provided in the partnership agreement, to partners with respect to their partnership interests:

(a) for the return of their contributions; and

(b) in the proportions in which the partners share in distributions.

Amended by Chapter 189, 1991 General Session

48-2a-901. Law governing.

Subject to the Constitution of this state:

(1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Enacted by Chapter 233, 1990 General Session

48-2a-902. Registration.

(1) (a) Before transacting business in this state, a foreign limited partnership shall register with the division.

(b) To register, a foreign limited partnership shall submit to the division in a form provided by the division:

(i) a certificate of good standing or similar evidence of its organization and existence under the laws of the state in which the foreign limited partnership is formed; and

(ii) an original and one copy of an application for registration as a foreign limited partnership, signed under penalty of perjury by a general partner and setting forth:

(A) the name of the foreign limited partnership and, if that name is not available in this state, the name under which it proposes to register and transact business in this

state;

(B) the state and date of its formation;

(C) the information required by Subsection 16-17-203(1);

(D) the name and business address of each general partner; and

(E) the street address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(2) Without excluding other activities that may not constitute transacting business in this state, a foreign limited partnership is not considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) (i) maintaining or defending any action or suit or any administrative or arbitration proceeding;

(ii) effecting the settlement of an action or proceeding; or

(iii) effecting the settlement of a claim or dispute;

(b) holding a meeting of its general partners or limited partners or carrying on another activity concerning its internal affairs;

(c) maintaining a bank account;

(d) (i) maintaining an office or agency for the transfer, exchange, and registration of its securities; or

(ii) appointing and maintaining a trustee or depository with relation to its securities;

(e) effecting sales through an independent contractor;

(f) soliciting or procuring an order, whether by mail or through an employee, agent, or otherwise, if the order requires acceptance without this state before becoming a binding contract;

(g) creating evidences of debt, mortgages, or liens on real or personal property;

(h) securing or collecting a debt or enforcing a right in property securing the property;

(i) transacting business in interstate commerce;

(j) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature; or

(k) (i) acquiring, in a transaction outside this state or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or personal property in this state;

(ii) collecting or adjusting of principal and interest payments on the conditional sale contract or debt described in Subsection (2)(k)(i);

(iii) enforcing or adjusting a right in property provided for in the conditional sale contract or securing the debt; or

(iv) taking an action necessary to preserve and protect the interest of the conditional vendor in the property covered by the conditional sales contract or the interest of the mortgagee or holder of the lien in the security, or any combination of the one or more transactions.

(3) (a) The division may permit a tribal limited partnership to register with the division in the same manner as a foreign limited partnership formed in another state.

(b) If a tribal limited partnership elects to register with the division, for purposes of this chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited partnership formed under the laws of another state.

Amended by Chapter 249, 2008 General Session
Amended by Chapter 364, 2008 General Session

48-2a-903. Issuance of registration.

(1) If the division finds that an application for registration conforms to law as to its form, and all requisite fees have been paid, it shall:

(a) place on the original and the copy of the application a stamp or seal indicating the time, month, day, and year of the filing, the director of the division's signature and the division's seal, or facsimiles thereof, and the name of the division;

(b) file in its office the signed original of the application; and

(c) issue a certificate of registration to transact business in this state to which is attached the stamped copy.

(2) The certificate of registration, together with the stamped copy of the application, shall be returned to the person who filed the application or his representative.

Enacted by Chapter 233, 1990 General Session

48-2a-904. Name.

A foreign limited partnership shall register with the division under the name under which it is registered in its state of organization; provided that the name includes the words "limited partnership", "limited", "L.P.", or "Ltd." and provided that the name could be registered by a domestic limited partnership.

Enacted by Chapter 233, 1990 General Session

48-2a-905. Changes and amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described in the statement have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file with the division a certificate, signed under penalty of perjury by a general partner, correcting or amending the statement.

Amended by Chapter 189, 1991 General Session

48-2a-906. Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the division a certificate of cancellation signed under penalty of perjury by a general partner. A cancellation does not terminate the authority of the director of the division to accept service of process on the foreign limited partnership with respect to claims for relief and causes of action against the foreign limited partnership arising before the cancellation.

Amended by Chapter 189, 1991 General Session

48-2a-907. Transaction of business without registration.

(1) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the fact that the foreign limited partnership has transacted business in this state without registration or has otherwise become subject to the jurisdiction of the courts of this state.

(4) A foreign limited partnership, by transacting business in this state without registration, appoints the director of the division as its agent for service of process with respect to claims for relief and causes of action arising out of the transaction of business in this state.

Amended by Chapter 189, 1991 General Session

48-2a-908. Action by director of division.

The director of the division may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this Article.

Enacted by Chapter 233, 1990 General Session

48-2a-1001. Right of action.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action and the general partners' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those general partners to bring the action is not likely to succeed.

Enacted by Chapter 233, 1990 General Session

48-2a-1002. Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(1) must have been a partner at the time of the transaction of which he complains; or

(2) his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Amended by Chapter 189, 1991 General Session

48-2a-1003. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Enacted by Chapter 233, 1990 General Session

48-2a-1004. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

Enacted by Chapter 233, 1990 General Session

48-2a-1005. Security and costs.

In any action instituted in the right of any domestic or foreign limited partnership, unless the unreturned contributions to the partnership property of or allocable to the plaintiff amount to 5% or more of the unreturned contributions of all limited partners, in their status as limited partners, or the unreturned contributions of or allocable to the plaintiff have a market value in excess of $25,000, the limited partnership in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by the limited partnership in the defense of the action or may be incurred by other parties named as defendant for which the limited partnership may become legally liable, but not including attorneys' fees. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive. The limited partnership shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of such action if the court finds the action was brought without reasonable cause.

Amended by Chapter 189, 1991 General Session

48-2a-1006. Indemnification of a general partner.

To the extent that a general partner has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the general partner under Section 48-2a-1001, or in defense of any claim, issue, or matter therein, the general partner shall be indemnified by the limited partnership against expenses, including attorneys' fees, which the general partner actually and reasonably incurred.

Enacted by Chapter 233, 1990 General Session

48-2a-1101. Construction and application.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Enacted by Chapter 233, 1990 General Session

48-2a-1102. Short title.

This chapter may be cited as the "Utah Revised Uniform Limited Partnership Act."

Enacted by Chapter 233, 1990 General Session

48-2a-1103. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 233, 1990 General Session

48-2a-1104. Effective date -- Extended effective date -- Applicability of former law.

Except as set forth below, the effective date of this chapter is July 1, 1990.

(1) The existing provisions for execution and filing of certificates of limited partnerships continue in effect with respect to limited partnerships organized prior to the effective date of this chapter until January 1, 1991, the extended effective date, and Sections 48-2a-102, 48-2a-105, 48-2a-201, and 48-2a-210 are not effective with respect to such preexisting limited partnerships until January 1, 1991, the extended effective date.

(2) Sections 48-2a-210, 48-2a-901, 48-2a-902, 48-2a-903, 48-2a-904, 48-2a-905, 48-2a-906, 48-2a-907, and 48-2a-908, governing the registration of foreign limited partnerships are not effective until January 1, 1991, the extended effective date.

(3) Sections 48-2a-501, 48-2a-502, and 48-2a-608 apply only to contributions and distributions made after July 1, 1990, and Subsection 48-2a-102(1)(a) applies only to limited partnerships formed or qualified after July 1, 1990.

(4) Section 48-2a-704 applies only to assignments made after July 1, 1990.

(5) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of Section 48-2a-503, sharing of distributions, rather than the provisions of Section 48-2a-504, interim distributions, rather than the provisions of Section 48-2a-601, distributions to a withdrawing partner, rather than the provisions of Section 48-2a-604, and distributions of assets upon the winding up of a limited partnership, rather than the

provisions of Section 48-2a-804, govern limited partnerships formed before July 1, 1990.

(6) The county clerk in each county in this state shall transmit to the division by January 1, 1991, all certificates of limited partnership and certificates of amendment filed with them prior to July 1, 1990, by domestic limited partnerships whose existence has not terminated prior to July 1, 1990.

Amended by Chapter 5, 1991 General Session
Amended by Chapter 189, 1991 General Session

48-2a-1105. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter, the provisions of Title 48, Chapter 1, Part 1, General Partnership, govern.

Amended by Chapter 340, 2011 General Session

48-2a-1106. Savings clause.

The repeal of any statutory provision by this chapter does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on July 1, 1990, nor does the repeal of any existing statutory provision by this chapter impair any contract or affect any right accrued before July 1, 1990.

Enacted by Chapter 233, 1990 General Session

48-2a-1107. Fees.

The division may charge and collect fees in accordance with the provisions of Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

48-2c-100. Scope of chapter.

Until this chapter is repealed January 1, 2016, this chapter applies only to a limited liability company formed on or before December 31, 2013, that has not elected to be governed by Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as provided in Section 48-3a-1405.

Enacted by Chapter 412, 2013 General Session

48-2c-101. Title.

This chapter is known as the "Utah Revised Limited Liability Company Act."

Enacted by Chapter 260, 2001 General Session

48-2c-102. Definitions.

As used in this chapter:

(1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under

Utah insolvency law.

(2) "Business" includes a lawful trade, occupation, profession, business, investment, or other purpose or activity, whether or not that trade, occupation, profession, business, investment, purpose, or activity is carried on for profit.

(3) "Capital account," unless otherwise provided in the operating agreement, means the account, as adjusted from time to time, maintained by the company for each member to reflect:

(a) the value of all contributions by that member;

(b) the amount of all distributions to that member or the member's assignee;

(c) the member's share of profits, gains, and losses of the company; and

(d) the member's share of the net assets of the company upon dissolution and winding up that are distributable to the member or the member's assignee.

(4) "Company," "limited liability company," or "domestic company" means a person organized as a:

(a) limited liability company under or subject to this chapter; or

(b) a low-profit limited liability company under or subject to this chapter.

(5) (a) "Distribution" means a direct or indirect transfer by a company of money or other property, except:

(i) an interest in the company; or

(ii) incurrence of indebtedness by a company, to or for the benefit of members in the company in respect of any interest in the company.

(b) "Distribution" does not include amounts constituting:

(i) reasonable compensation for present or past services; or

(ii) reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(6) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(7) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a company or foreign company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a general partnership or a domestic or foreign limited partnership;

(h) a trust;

(i) a state;

(j) the United States; or

(k) a foreign government.

(8) (a) "Filed with the division" means that a statement, document, or report:

(i) complies with the requirements of Section 48-2c-207; and

(ii) is accepted for filing by the division.

(b) "Filed with the division" includes filing by electronic means approved by the division.

(9) "Foreign company" means a person organized as a:

(a) limited liability company under a law other than the laws of this state; or

(b) low-profit limited liability company under a law other than the laws of this state.

(10) "Interest in the company" means a member's economic rights in a company including the right to receive:

(a) a distribution from the company; and

(b) a portion of the net assets of the company upon dissolution and winding up of the company.

(11) "Low-profit limited liability company" means a company meeting the requirements of Section 48-2c-412.

(12) "Manager" means a person elected or otherwise designated by the members to manage a manager-managed company pursuant to Part 8, Management.

(13) "Manager-managed company" means a company whose management is vested in managers pursuant to Part 8, Management.

(14) "Member" means a person with:

(a) an ownership interest in a company; and

(b) the rights and obligations specified under this chapter.

(15) "Member-managed company" means a company whose management is vested in its members pursuant to Part 8, Management.

(16) (a) "Operating agreement" means a written agreement of the members:

(i) concerning the business or purpose of the company and the conduct of its affairs; and

(ii) which complies with Part 5, Operating Agreements.

(b) "Operating agreement" includes a written amendment agreed to by all members or other writing adopted in any other manner as may be provided in the operating agreement.

(17) "Person" means an individual or entity.

(18) "Proceeding" means an administrative, judicial or other trial, hearing, or other action, whether civil, criminal, or investigative, the result of which may be that a court, arbitrator, or governmental agency may enter a judgment, order, decree, or other determination which, if not appealed or reversed, would be binding upon any person subject to the jurisdiction of that court, arbitrator, or governmental agency.

(19) "Professional services" is as defined in Part 15, Professions.

(20) "Profits interest" means that portion of the company's profits to be allocated to an individual member upon an allocation of profits.

(21) "Profits interests" or "interests in profits" with respect to a company means the total interests of all of the company's members in the company's profits.

(22) "Signed," "signs," or "signature" means:

(a) a manual signature or authorized facsimile of the signature; or

(b) an electronic signature approved by the division.

(23) "State" means:

(a) a state, territory, or possession of the United States;

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

(24) "Tribal limited liability company" means a limited liability company:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

(25) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Amended by Chapter 141, 2009 General Session

48-2c-103. Application of partnership provisions.

"Partnership" and "limited partnership," when used in any chapter or title other than this chapter or Title 48, Chapter 1, General and Limited Liability Partnership, and Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, are considered to include a company organized under this chapter, unless the context requires otherwise.

Enacted by Chapter 260, 2001 General Session

48-2c-104. Separate legal entity.

A company formed under this chapter is a legal entity distinct from its members.

Enacted by Chapter 260, 2001 General Session

48-2c-105. Purpose.

Except as provided in Subsection 48-2c-102(2) or in Part 15 of this chapter, each company formed under this chapter has the purpose of engaging in any business unless a more limited purpose is set forth in its articles of organization.

Enacted by Chapter 260, 2001 General Session

48-2c-106. Name -- Exclusive right.

(1) Except as provided in Subsection (8), the name of a company as set forth in the articles of organization:

(a) shall contain the terms:

(i) "limited company";

(ii) "limited liability company";

(iii) "L.C." or "LC"; or

(iv) "L.L.C." or "LLC";

(b) may not contain:

(i) the terms:

(A) "association";

(B) "corporation";

(C) "incorporated";

(D) "limited partnership";

(E) "limited";

(F) "L.P."; or

(G) "Ltd."; or

(ii) words or an abbreviation with a similar meaning in any other language;

(c) without the written consent of the United States Olympic Committee, may not

contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection in accordance with Section 13-34-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution".

(2) (a) A person, other than a company formed under this chapter or a foreign company authorized to transact business in this state, may not use in its name in this state any of the terms:

(i) "limited liability company";

(ii) "limited company";

(iii) "L.L.C.";

(iv) "L.C.";

(v) "LLC"; or

(vi) "LC".

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

(A) "corporation" or "corp."; or

(B) "incorporated" or "inc."; and

(ii) a limited liability partnership may use in its name the terms:

(A) "limited liability partnership";

(B) "L.L.P."; or

(C) "LLP".

(3) Except as authorized by Subsection (4), the name of a company must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the actual name, reserved name, or fictitious or assumed name of any entity registered with the division; or

(b) any tradename, trademark, or service mark registered with the division.

(4) (a) A company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve the name for which the company applies under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(5) A name is distinguishable from other names, trademarks, and service marks

registered with the division if it contains one or more different words, letters, or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P." or "LP";

(vii) "Ltd.";

(viii) "limited liability company";

(ix) "limited company";

(x) "L.C." or "LC"; or

(xi) "L.L.C." or "LLC";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization; or

(f) for a company that is formed in this state on or after May 4, 1998, or registered as a foreign company in this state on or after May 4, 1998, differences between singular and plural forms of words.

(7) A name that implies that a company is an agency of this state or any of its political subdivisions, if it is not actually a legally established agency or political subdivision, may not be approved for filing by the division.

(8) The name of a low-profit limited liability company shall contain the abbreviation "L3C" or "l3c".

Amended by Chapter 218, 2010 General Session

48-2c-107. Limited liability company name -- Limited rights.

The authorization to file articles of organization under this chapter or to reserve or register a company name as granted by the division does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Enacted by Chapter 260, 2001 General Session

48-2c-108. Reservation of name.

(1) The exclusive right to register a name for use by a company may be

reserved by any person.

(2) (a) The reservation described in Subsection (1) shall be made by filing with the division an application signed by the applicant.

(b) If the division finds that the name is available for use by a company, the division shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days.

(c) The reserved name may be transferred to any other person by filing with the division a notice of the transfer that:

(i) is signed by the applicant for whom the name was reserved; and

(ii) specifies the name and address of the transferee.

Amended by Chapter 193, 2002 General Session

48-2c-109. Transaction of business outside state.

It is the intention of the Utah Legislature by the enactment of this chapter that the legal existence of companies formed under this chapter be recognized beyond the boundaries of this state and that, subject to any reasonable registration or filing requirements, any such company transacting business outside this state be recognized as a limited liability company and be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States.

Enacted by Chapter 260, 2001 General Session

48-2c-110. Powers.

Each company organized and existing under this chapter may:

(1) sue or be sued, institute or defend any action, or participate in any proceeding in its own name;

(2) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;

(3) sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;

(4) lend money to and otherwise assist its members, managers, and employees;

(5) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, or otherwise use or deal in or with:

(a) shares or other interests in any entity or obligations of any person; or

(b) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of any of them;

(6) (a) make contracts or guarantees or incur liabilities;

(b) borrow money at such rates of interest as the company may determine;

(c) issue its notes, bonds, or other obligations; or

(d) secure any of its obligations by mortgage or pledge of all or any part of its

property, franchises, and income;

(7) (a) lend money for any lawful purpose;

(b) invest or reinvest its funds; or

(c) take and hold real or personal property as security for the payment of funds so loaned or invested;

(8) conduct its business and maintain offices and exercise the powers granted by this chapter within this state, and in any state, territory, district, or possession of the United States, or in any foreign country;

(9) elect or appoint managers and agents of the company, define their duties, and fix their compensation;

(10) make and alter an operating agreement as allowed by Part 5, Operating Agreements;

(11) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;

(12) indemnify or hold harmless any person;

(13) cease its activities and cancel its certificate of organization;

(14) transact any lawful business that the members or the managers find to be in aid of governmental policy;

(15) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its members, managers, and employees;

(16) be a promoter, incorporator, organizer, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise or entity;

(17) render professional services, if each member of a company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law; and

(18) have and exercise the same powers as an individual, and all powers necessary or convenient to effect or carry out any or all of the purposes for which the company is organized.

Amended by Chapter 141, 2005 General Session

48-2c-113. Inspection of records by members and managers.

(1) A current or former member or manager of a company is entitled to inspect and copy, during regular business hours at the company's principal office, any of the records described in Subsection (2) after first giving the company written notice of the demand at least five business days before the inspection is to occur.

(2) Records required to be kept at the principal office under Subsection (1) include:

(a) a current list in alphabetical order of the full name and last-known business, residence, or mailing address of each member and each manager;

(b) a copy of the stamped articles of organization and all certificates of amendment thereto, together with a copy of all signed powers of attorney pursuant to which the articles of organization or any amendment has been signed;

(c) a copy of the writing required of an organizer under Subsection 48-2c-401(2);

(d) a copy of the company's federal, state, and local income tax returns and

reports, if any, for the three most recent years;

(e) a copy of any financial statements of the company, if any, for the three most recent years;

(f) a copy of the company's operating agreement, if any, and all amendments thereto;

(g) a copy of the minutes, if any, of each meeting of members and of any written consents obtained from members; and

(h) unless otherwise set forth in the articles of organization or the operating agreement, a written statement setting forth:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;

(ii) the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

(iii) any right of a member to receive distributions;

(iv) any date or event upon the happening of which a member is entitled to payment in redemption of the member's interest in the company; and

(v) any date or event upon the happening of which the company is to be dissolved and its affairs wound up.

(3) This section does not affect:

(a) the right of a member or manager to inspect records if the member or manager is in litigation with the company, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of records for examination.

(4) A current or former member or manager may not use any information obtained through the inspection or copying of records permitted by Subsection (1) for any improper purpose.

(5) The division may on the division's own behalf subpoena a record described in Subsection (2) if a company denies any current or former member or manager access to the records.

Amended by Chapter 43, 2010 General Session

48-2c-114. Scope of inspection right.

(1) An agent or attorney of a current or former member or manager has the same inspection and copying rights as the person represented by the agent or attorney.

(2) The right to copy records under Section 48-2c-113 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) The company may impose a reasonable charge, payable in advance, to cover the costs of labor and material, for copies of any documents to be provided. The charge may not exceed the estimated cost of production or reproduction of the records.

Enacted by Chapter 260, 2001 General Session

48-2c-115. Court-ordered inspection.

(1) If a company does not allow a current or former member or manager or their agent or attorney who complies with Subsection 48-2c-113(1) to inspect or copy any records required by that subsection to be available for inspection, the district court of the county in this state in which the company's principal office is located, or if the company has no principal office in this state, the district court of Salt Lake County, may summarily order inspection and copying of the records demanded at the company's expense, on application of the person denied access to the records. The court shall dispose of an application under this Subsection (1) on an expedited basis.

(2) If a court orders inspection or copying of records demanded, it shall also order the company to pay the costs incurred by the person requesting the order, including reasonable attorney's fees unless the company proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the person to inspect the records demanded.

(3) If a court orders inspection or copying of records demanded, it may:

(a) impose reasonable restrictions on the use or distribution of the records by the person demanding inspection;

(b) order the company to pay the member or manager for reasonable attorney's fees and costs incurred and for any damages incurred as a result of the company's denial if the court determines that the company did not act in good faith in refusing to allow the inspection or copying; and

(c) grant the person demanding inspection or copying any other available legal remedy.

Amended by Chapter 364, 2008 General Session

48-2c-116. Member or manager as a party to proceedings.

A member or manager of a company is not a proper party to proceedings by or against a company, except when the object is to enforce a member's or manager's right against, or liability to, the company.

Enacted by Chapter 260, 2001 General Session

48-2c-118. Waiver of notice.

If, under the provisions of this chapter, the articles of organization, or the operating agreement of a company, notice is required to be given to a member or manager of a company, a waiver in writing signed by the person entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

Enacted by Chapter 260, 2001 General Session

48-2c-119. Transaction of members or managers with company.

Except as provided in the articles of organization or operating agreement of the company, a member or manager may transact business with the company including, sell or lease property to, buy or lease property from, lend money to, and borrow money from the company, and act as a surety, guarantor or endorser for, or guarantee or

assume one or more specific obligations of, or provide collateral for, the company, and transact any other business with the company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a person who is not a member or manager, except that this section shall not be construed to relieve a member or manager of the duties specified in Section 48-2c-807.

Enacted by Chapter 260, 2001 General Session

48-2c-120. Articles of organization and operating agreement.

(1) A company's articles of organization or operating agreement may not:

(a) restrict a right to inspect and copy records under Section 48-2c-113;

(b) reduce the duties of members or managers under Section 48-2c-807;

(c) eliminate the obligation of good faith and fair dealing, except that the members by written agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(d) vary any filing requirement under this chapter;

(e) vary any requirement under this chapter that a particular action or provision be reflected in a writing;

(f) vary the right to expel a member based on any event specified in Subsection 48-2c-710(3);

(g) vary the remedies under Section 48-2c-1210 for judicial dissolution of a company;

(h) except as allowed by Section 48-2c-1103 or any other provision of law, restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, the managers, and the company, without the consent of those persons; or

(i) eliminate or limit the personal liability of any person vested with management authority to the company or its members for damages for any breach of duty in the capacity where a judgment or other final adjudication adverse to the manager establishes that the manager's acts or omissions:

(i) were in bad faith;

(ii) involved gross negligence;

(iii) involved willful misconduct; or

(iv) resulted in a financial profit or other advantage to which the manager was not legally entitled.

(2) The articles of organization and operating agreement may:

(a) vary the requirement under Section 48-2c-1104 that, if all of the other members of the company other than the member proposing to dispose of the member's interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business or affairs of the company or to become a member; and

(b) vary the requirement under Section 48-2c-703 that, after the filing of the original articles of organization, a person may be admitted as an additional member only upon the written consent of all members.

Amended by Chapter 92, 2006 General Session

48-2c-121. Scope of notice.

(1) Articles of organization that have been filed with the division constitute notice to third persons, and to members and managers of the company:

(a) that the company is a limited liability company formed under the laws of this state; and

(b) of all statements set forth in the articles of organization that are:

(i) required by Subsection 48-2c-403(1) to be set forth in articles of organization; and

(ii) expressly permitted to be set forth in the articles of organization by Subsection 48-2c-403(4).

(2) The filing with the division of any annual report required by Section 48-2c-203 constitutes notice to third persons, as well as to members and managers of the company, of the information set forth in the annual report which is required by Section 48-2c-203 to be set forth in an annual report.

(3) The filing with the division of any statement allowed by Section 48-2c-122 is notice to third persons, as well as to members and managers of the company, of the information set forth in that statement which is expressly permitted to be set forth in that statement by Section 48-2c-122.

(4) The filing with the division of a certified copy of a court order under Subsection 48-2c-809(5) is notice of the contents of the order to:

(a) third persons;

(b) members of the company; and

(c) managers of the company.

Amended by Chapter 141, 2005 General Session

48-2c-122. Statement of person named as manager or member.

Any person named as a manager or member of a domestic company or foreign company in an annual report or other document on file with the division may, if that person does not hold the position of manager or member, deliver to the division for filing a written statement setting forth:

(1) the person's name;

(2) the name of the company;

(3) information sufficient to identify the report or other document in which that person is named as a manager or member; and

(4) the date on which he ceased to be a manager or member of the company, or a statement that the person did not hold the position for which that person was named in the report or other document.

Enacted by Chapter 260, 2001 General Session

48-2c-201. Place for filings.

Filings required by this chapter to be made with the division shall be made at the division's offices in Salt Lake City, Utah, or at any other place within the state as the division director may designate.

Enacted by Chapter 260, 2001 General Session

48-2c-202. Record of filings.

The division shall maintain a record of all filings required by this chapter to be made with the division and shall make those records available for inspection and copying by any person upon request and payment of a reasonable fee determined by the division.

Enacted by Chapter 260, 2001 General Session

48-2c-203. Annual report.

(1) (a) A company or a foreign company authorized to transact business in this state shall file an annual report with the division:

(i) during the month of its anniversary date of formation, in the case of domestic companies; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign companies authorized to transact business in this state.

(b) An annual report required by Subsection (1)(a) shall set forth:

(i) the name of the company;

(ii) the state or country under the laws of which it is formed; and

(iii) any change in:

(A) the information required by Subsection 16-17-203(1);

(B) if the street address or legal name of any manager in a manager-managed company, any member in a member-managed company, or any person with management authority of a foreign company changes, the new street address or legal name of the manager, member, or other person; and

(C) the identity of the persons constituting the managers in a manager-managed company or members in a member-managed company or other person with management authority of a foreign company.

(2) (a) The annual report required by Subsection (1) shall:

(i) be made on a form prescribed and furnished by the division; and

(ii) contain information that is given as of the date of signing the annual report.

(b) An annual report form shall include a statement notifying the company that failure to file the annual report will result in:

(i) the dissolution of the company, in the case of a domestic company; or

(ii) the revocation of authority to transact business in this state in the case of a foreign company.

(3) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the company.

(4) (a) If the annual report conforms to the requirements of this chapter, the division shall file the report.

(b) If the annual report does not conform to the requirements of this chapter, the division shall mail the report, first class postage prepaid, to the registered agent of the company for any necessary corrections at the street address for the registered agent

most recently furnished to the division by notice, annual report, or other document.

(c) If the division returns an annual report in accordance with Subsection (4)(b), the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the annual report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the registered agent of the company.

Amended by Chapter 141, 2009 General Session

48-2c-204. Signing of documents filed with division.

(1) Unless otherwise specified in this chapter, each document or report required by this chapter to be filed with the division shall be signed in the following manner:

(a) articles of organization for a domestic company shall be signed by at least one organizer or one manager or, if the company is member-managed, by at least one member; and

(b) each other document or report shall be signed by at least one manager for a manager-managed company or one member for a member-managed company or a person with management authority for a foreign company, subject in the case of a domestic company, to any restriction or requirement in the articles of organization or operating agreement.

(2) Any person may sign any document or report by an attorney-in-fact, but a power of attorney to sign a certificate of amendment relating to the admission of a member shall specify the member to be admitted. Powers of attorney need not be filed with the division but shall be retained with the records of the company required under Section 48-2c-113.

(3) Each document or report required to be filed with the division shall state beneath or opposite the signature of the person signing the document or report, in printed or hand-printed letters, the signer's name and the capacity in which the document or report was signed.

(4) The signature of each person signing any document or report required to be filed with the division constitutes an oath or affirmation by the person signing, under penalties of perjury, that the facts stated therein are true and that any power of attorney used in connection with such signing is proper in form and substance.

Amended by Chapter 364, 2008 General Session

48-2c-205. Penalty for signing false documents.

A person who signs a document or report knowing it to be false in any material respect, with the intent that the document or report be delivered to the division for filing, is guilty of a class A misdemeanor.

Enacted by Chapter 260, 2001 General Session

48-2c-206. Powers of the division.

The division and the division director shall have the powers and authority reasonably necessary to interpret and administer the provisions of this chapter

applicable to them and to perform the duties required of the division and the division director under this chapter.

Enacted by Chapter 260, 2001 General Session

48-2c-207. Filing requirements.

(1) A document must satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to be filed with the division.

(2) This chapter must require or permit filing the document with the division.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or machine printed.

(5) The document must be in the English language. A company name need not be in English if written in English letters, Arabic or Roman numerals, and the certificate of existence required of foreign companies need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be signed, or must be a true copy made by a photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been signed:

(a) as required by Section 48-2c-204;

(b) if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary; or

(c) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

(7) If the division has prescribed a mandatory form or cover sheet for the document, the document must be in or on the prescribed form or must have the required cover sheet.

(8) The document must be delivered to the division for filing and must be accompanied by the correct filing fee and any franchise tax, license fee, or penalty required by this chapter or other law.

(9) If the person filing a document with the division desires to receive back a copy of the filed document, that person must submit with the filed document an exact copy of the filed document along with a return-addressed envelope with adequate first-class postage thereon.

Enacted by Chapter 260, 2001 General Session

48-2c-208. Effective time and date of filed documents.

(1) Except as provided in Subsection (2) and in Subsection 48-2c-209(4), a document submitted to the division for filing under this chapter shall be considered effective at the time of filing on the date it is filed with the division, as evidenced by the division's stamp or endorsement on the document as described in Subsection 48-2c-210(2).

(2) Unless otherwise provided in this chapter, a document, other than an

application to reserve the right to register a name, may specify conspicuously on its face a delayed effective time or date, or both an effective time and date, and if it does so, the document becomes effective as specified.

(a) If a delayed effective time but no date is specified, the document is effective on the date it is filed with the division, as that date is specified in the division's time and date stamp or endorsement on the document, at the later of the time specified on the document as its effective time or the time specified in the time and date stamp or endorsement.

(b) If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

(c) A delayed effective date for a document may not be later than the 90th day after the date it is filed with the division. If a document specifies a delayed effective date that is later than the 90th day after the document is filed with the division, the document is effective on the 90th day after it is filed with the division.

(3) If a document specified a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal, signed in the same manner as the document being withdrawn, stating that the document has been revoked by appropriate action and is void.

Enacted by Chapter 260, 2001 General Session

48-2c-209. Correcting filed documents.

(1) A domestic or foreign company may correct a document filed with the division if the document:

(a) contains an incorrect statement, misspelling, or other technical error or defect; or

(b) was defectively signed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by delivering to the division for filing articles of correction that:

(a) describe the document, including its filing date, or have a copy of it attached to the articles of correction;

(b) specify the incorrect statement and the reason it is incorrect or the manner in which the signing, attestation, sealing, verification, or acknowledgment was defective; and

(c) correct the incorrect statement, misspelling, or other technical error or defect, or defective signing, attestation, sealing, verification, or acknowledgment.

(3) Articles of correction may be signed by any person designated in Section 48-2c-204, or by any person who signed the document that is corrected.

(4) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed with the division.

Enacted by Chapter 260, 2001 General Session

48-2c-210. Filing duty of division.

(1) If a document delivered to the division for filing satisfies the requirements of Section 48-2c-207, the division shall file it.

(2) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on the document. The division shall evidence on the document any filing fees paid.

(3) If the division refuses to accept a document for filing, it shall return the document to the person requesting the filing within 10 days after the document was delivered to the division, together with a written notice providing a brief explanation of the reason for the refusal.

(4) The division's duty to file documents under this section is ministerial. Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Enacted by Chapter 260, 2001 General Session

48-2c-211. Appeal from division's refusal to file document.

(1) If the division refuses to accept a document delivered to it for filing, the domestic or foreign company for which the filing was requested, or its representative, within 30 days after the effective date of the notice of refusal given by the division pursuant to Subsection 48-2c-210(3), may appeal the refusal to the district court of the county where the company's principal office is or will be located, or if there is none in this state, Salt Lake County. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition a copy of the document and the division's notice of refusal.

(2) The court may summarily order the division to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in any other civil proceedings.

Amended by Chapter 364, 2008 General Session

48-2c-212. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the division, or an endorsement, seal, or stamp placed on the copy, which certificate, endorsement, seal, or stamp bears the signature of the director of the division, or a facsimile of the director's signature, and the seal of the division, is conclusive evidence that the original document has been filed with the division.

Enacted by Chapter 260, 2001 General Session

48-2c-213. Certificates issued by the division.

(1) Anyone may apply to the division for a certificate of existence for a domestic company, a certificate of authorization for a foreign company, or a certificate that sets forth any facts of record in the office of the division.

(2) A certificate of existence or authorization shall state:

(a) the domestic company's name or the foreign company's name as registered in this state;

(b) (i) that the domestic company is duly formed under the law of this state and the date of its formation; or

(ii) that the foreign company is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign company;

(d) that its most recent annual report required by Section 48-2c-203 has been filed with the division;

(e) that articles of dissolution have not been filed with the division; and

(f) other facts of record in the office of the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Enacted by Chapter 260, 2001 General Session

48-2c-214. Fees.

Unless otherwise provided by statute, the division shall collect fees for its services in amounts determined by the department in accordance with the provisions of Section 63J-1-504.

Amended by Chapter 141, 2009 General Session

48-2c-305. Director of division as agent for service of process -- Records of process served.

The director of the division shall keep a record of each process served upon the director under this chapter, including the date process was served on the director and the action of the director with reference thereto.

Enacted by Chapter 260, 2001 General Session

48-2c-309. Service on withdrawn foreign company.

(1) A foreign company that has withdrawn from this state pursuant to Section 48-2c-1611 shall either:

(a) maintain a registered agent in this state to accept service of process on its behalf in any proceeding based on a cause of action arising during the time it was transacting business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal and any change

shall be governed by Title 16, Chapter 17, Model Registered Agents Act, which applies to foreign companies authorized to transact business in this state; or

(b) be considered to have authorized service of process on it, in connection with any cause of action arising during the time it was transacting business in this state, by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any, set forth in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division; or

(ii) the address for service of process that is stated in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division.

(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the withdrawn foreign company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign company; or

(c) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a withdrawn foreign company.

Amended by Chapter 364, 2008 General Session

48-2c-311. Venue for action against foreign company.

Any person who has a cause of action against any foreign company, whether or not the company is authorized to transact business in this state, may file suit against the company in the district court of any county in which there is proper venue if the cause of action arose in Utah out of the company's transacting business in Utah or while the company was transacting business in Utah.

Enacted by Chapter 260, 2001 General Session

48-2c-401. Organizer.

(1) (a) One or more persons may act as organizers of a company by signing and filing with the division articles of organization that meet the requirements of Section 48-2c-403.

(b) An organizer who is a natural person must be 18 years of age or older.

(c) The persons acting as organizers may be members or managers of the company at the time of formation or after formation has occurred.

(2) (a) The signing of the articles of organization constitutes an affirmation by the organizers that:

(i) the company has one or more members; and

(ii) if the company is manager-managed, the person or persons named as managers in the articles of organization have consented to serve as managers of the company.

(b) At or prior to filing articles of organization for a company, the organizer or

organizers shall prepare a writing to be held with the records of the company that sets forth for each company that is not to be member-managed, the name and street address of each initial member of the company.

Amended by Chapter 141, 2005 General Session

48-2c-402. Formation of company.

(1) A company may be formed by delivering to the division for filing articles of organization for the company meeting the requirements of Sections 48-2c-207 and 48-2c-403.

(2) (a) A company shall have at least one member:

(i) at the time of formation; and

(ii) at all times after its formation.

(b) Any person may be a member of a company.

(c) Failure to maintain at least one member shall be an event of dissolution subject to Section 48-2c-1201.

(3) The company shall be considered formed as of the time, day, month, and year indicated by the division's stamp or seal on the articles of organization.

(4) Except as against this state in a proceeding for administrative dissolution or in a proceeding for judicial dissolution of the company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members and managers have been complied with and that the company has been legally formed under this chapter.

Enacted by Chapter 260, 2001 General Session

48-2c-403. Articles of organization.

(1) The articles of organization of a company shall set forth:

(a) the name of the company;

(b) the business purpose for which the company is organized;

(c) if the company is to be a low-profit limited liability company, that the company is a low-profit limited liability company;

(d) the information required by Subsection 16-17-203(1);

(e) the name and street address of each organizer who is not a member or manager;

(f) if the company is to be manager-managed:

(i) a statement that the company is to be managed by a manager or managers; and

(ii) the names and street addresses of the initial managers; and

(g) if the company is to be member-managed:

(i) a statement that the company is to be managed by its members; and

(ii) the names and street addresses of the initial members.

(2) If the company is to be manager-managed, the articles of organization do not need to state the name or address of any member, except as required by Part 15, Professions.

(3) It is not necessary to include in the articles of organization any of the powers

enumerated in this chapter.

(4) The articles of organization may contain any other provision not inconsistent with law, including:

(a) a provision limiting or restricting:

(i) the business in which the company may engage;

(ii) the powers that the company may exercise; or

(iii) both Subsections (4)(a)(i) and (ii);

(b) a statement of whether there are limitations on the authority of managers or members to bind the company and, if so, what the limitations are, set out in detail and not with reference to any other document; or

(c) a statement of the period of duration of the company, which may be as long as 99 years from the date the articles of organization, or the latest of any amendments to the articles of organization effecting a change in the period of duration, were filed with the division.

(5) If the articles of organization of a company do not specify a period of duration, the period of duration for that company is 99 years from the date the articles of organization were filed with the division, unless the period of duration is extended by an amendment to the articles of organization as permitted by this chapter.

Amended by Chapter 141, 2009 General Session

48-2c-404. Prefiling activities.

A company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until its articles of organization have been filed with the division. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the company incurred on behalf of the company prior to the filing of its articles of organization with the division.

Enacted by Chapter 260, 2001 General Session

48-2c-405. When amendment to articles of organization required.

The articles of organization of a company shall be amended when:

(1) there is a change in the name of the company;

(2) there is a change in the character of the business of the company specified in the articles of organization;

(3) there is a false or erroneous statement in the articles of organization;

(4) there is a change in the period of duration of the company that is:

(a) stated in the articles of organization; or

(b) provided for in Section 48-2c-403;

(5) there is a change in:

(a) the management structure of the company from a manager-managed company to a member-managed company or from a member-managed company to a manager-managed company;

(b) if the company is manager-managed, who is a manager of the company; or

(c) if the company is member-managed, who is a member of the company;

(6) in accordance with Section 48-2c-412, the company ceases to be a low-profit limited liability company; or

(7) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among the members.

Amended by Chapter 141, 2009 General Session

48-2c-406. Actions not requiring amendment.

A company is not required to amend its articles of organization to report a change in:

(1) the street or mailing address of a manager in a manager-managed company or member in a member-managed company;

(2) the legal name of a manager in a manager-managed company or a member in a member-managed company; or

(3) the information required by Subsection 16-17-203(1).

Amended by Chapter 364, 2008 General Session

48-2c-407. Authority to amend articles of organization.

(1) (a) A company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization.

(b) Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment.

(2) Except as may otherwise be expressly provided in the articles of organization or operating agreement, a member has no vested property right resulting from any provision in the articles of organization, including any provision relating to management, control, capital structure, purpose, duration of the company, or entitlement to distributions.

Enacted by Chapter 260, 2001 General Session

48-2c-408. Certificate of amendment to articles of organization.

(1) A company amending its articles of organization shall deliver to the division for filing a certificate of amendment that includes:

(a) the name of the company;

(b) the text of each amendment adopted;

(c) if the amendment provides for restructuring the ownership of the company or an exchange or reclassification of the members' interests in the company, provisions for implementing the amendment if not contained in the text of the amendment itself;

(d) the date each amendment was adopted by the members;

(e) a statement that each amendment was adopted by the members and any managers, as required by Section 48-2c-803 or 48-2c-804, or as otherwise required by the articles of organization or operating agreement; and

(f) the signature required by Section 48-2c-204.

(2) Unless otherwise provided in the articles of organization, the operating agreement, or in Section 48-2c-803 or 48-2c-804, each amendment to the articles of organization of a company must be approved by all members and any managers and, if there are classes of members, by all of the members of each class.

(3) A company shall deliver the certificate of amendment required by Subsection (1) to the division for filing within 60 days after adoption of the amendment.

(4) Upon the filing with the division of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment.

Amended by Chapter 141, 2005 General Session

48-2c-409. Restated articles of organization.

(1) A company may integrate into a single document all of the provisions of its articles of organization and amendments thereto, and it may at the same time also further amend its articles of organization, by adopting restated or amended and restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or document that was signed and filed pursuant to this chapter, they shall be specifically designated in their heading as "Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "Amended and Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(4) (a) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the division. Restated articles shall also state that they were duly signed and filed in accordance with this section.

(b) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of restated articles of organization with the division, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this chapter not inconsistent with this section, that would apply if a separate certificate of amendment were filed to make the amendment or change.

Enacted by Chapter 260, 2001 General Session

48-2c-410. Transfer to other jurisdiction.

(1) Any domestic company may transfer to or domesticate in any jurisdiction besides this state that permits the transfer to or domestication in such jurisdiction of a limited liability company by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2) if such transfer is approved by the members as provided in the company's operating agreement or, if the operating agreement does not so provide, by all of the members.

(2) The articles of transfer shall state:

(a) the name of the company;

(b) the date of filing of the company's original articles of organization with the division;

(c) the jurisdiction to which the company shall be transferred or in which it shall be domesticated;

(d) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;

(e) that the transfer or domestication has been approved by the members;

(f) that the existence of the company as a domestic company of this state shall cease when the articles of transfer become effective;

(g) the agreement of the company that it may be served with process in this state in any proceeding for enforcement of any obligation of the company arising while it was a company under the laws of this state; and

(h) if the company does not apply for authority to transact business in this state as a foreign company pursuant to Section 48-2c-1604, then the address to which a copy of service of process may be made under Subsection (2)(g).

(3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and payment to the division of all fees prescribed under this chapter, the company shall cease to exist as a domestic company of this state. Thereafter, any certificate of the division as to the transfer shall be prima facie evidence of the transfer or domestication by the company out of this state.

(4) Transfer or domestication of a company out of this state in accordance with this section and the resulting cessation of its existence as a domestic company of this state shall not be considered to affect any obligations or liabilities of the company incurred prior to the transfer or domestication or the personal liability of any person incurred prior to the transfer or domestication, including, but not limited to, any taxes owing to this state, nor shall it be considered to affect the choice of law applicable to the company with respect to matters arising prior to such transfer or domestication.

Amended by Chapter 43, 2010 General Session

48-2c-411. Domestication of foreign company.

(1) Where the laws of another state, country, or jurisdiction allow a foreign company subject to those laws to transfer or domesticate to this state, the foreign company may become a domestic company by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if its members

approve the domestication.

(2) (a) The articles of domestication shall meet the requirements applicable to articles of organization set forth in Section 48-2c-403, except that:

(i) the articles of domestication need not name, or be signed by, the organizers of the foreign company;

(ii) any reference to the company's principal office, registered agent, or managers shall be to the principal office and agent in this state, and the managers then in office at the time of filing the articles of domestication; and

(iii) any reference to the company's members shall be to the members at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the foreign company was first formed, organized, or otherwise came into being;

(ii) the name of the foreign company immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of formation, principal place of business, or central administration of the foreign company immediately prior to the filing of the articles of domestication; and

(iv) a statement that the articles of domestication were approved by its members.

(3) Upon the filing of articles of domestication with the division:

(a) the foreign company shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter as a domestic company, and shall continue as if it had been organized under this chapter; and

(b) notwithstanding any other provisions of this chapter, the existence of the domesticated company shall be considered to have commenced on the date the foreign company commenced its existence in the jurisdiction in which the foreign company was first formed, organized, or otherwise came into being.

(4) The articles of domestication, upon filing with the division, shall become the articles of organization of the company, and shall be subject to amendments or restatement the same as any other articles of organization under this chapter.

(5) The domestication of any foreign company in this state shall not be considered to affect any obligation or liability of the foreign company incurred prior to its domestication.

Amended by Chapter 364, 2008 General Session

48-2c-412. Low-profit limited liability company.

(1) (a) To be a low-profit limited liability company, a company shall:

(i) state in its articles of organization that it is a low-profit limited liability company;

(ii) organize under this chapter; and

(iii) be organized for a business purpose that satisfies, and at all times operates to satisfy each of the requirements under Subsection (1)(b).

(b) A low-profit limited liability company:

(i) shall significantly further the accomplishment of one or more charitable or

educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;

(ii) shall demonstrate that it would not be formed but for the company's relationship to the accomplishment of a charitable or educational purpose;

(iii) subject to Subsection (3), may not have as a significant purpose the production of income or the appreciation of property; and

(iv) may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

(2) (a) If a company that is a low-profit limited liability company at its formation at any time ceases to meet a requirement to be a low-profit limited liability company under Subsection (1), the company:

(i) ceases to be a low-profit limited liability company on the day on which the company no longer meets the requirement; and

(ii) if it continues to meet the requirements of this chapter to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.

(b) A low-profit limited liability company's failure to meet a requirement of Subsection (1) may be:

(i) voluntary, in order to convert to a limited liability company that is not a low-profit limited liability company; or

(ii) involuntary.

(c) If a low-profit limited liability company ceases to be a low-profit limited liability company in accordance with Subsection (2)(a), the company shall:

(i) change its name to conform with Section 48-2c-106; and

(ii) amend its articles of organization in accordance with Section 48-2c-405.

(3) Notwithstanding Subsection (1), if a low-profit limited liability company produces significant income or capital appreciation, in the absence of other factors, the fact that the low-profit limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

Enacted by Chapter 141, 2009 General Session

48-2c-501. Initial agreement.

The initial operating agreement of a company, if one is adopted, shall be adopted by unanimous consent of the members.

Amended by Chapter 141, 2005 General Session

48-2c-502. General rules for operating agreements.

(1) Except as provided in Subsection 48-2c-120(1), or in the articles of organization, an operating agreement may modify the rules of any provision of this chapter that relates to:

(a) the management of the company;

(b) the business or purpose of the company;

(c) the conduct of the company's affairs; or

(d) the rights, duties, powers, and qualifications of, and relations between and among, the members, the managers, the members' assignees and transferees, and the company.

(2) Where the provisions of an operating agreement conflict with the provisions of this chapter, the provisions of this chapter shall control. Where the provisions of an operating agreement conflict with the articles of organization, the articles of organization shall control except to the extent the articles of organization conflict with the provisions of this chapter.

Enacted by Chapter 260, 2001 General Session

48-2c-503. Timing.

An operating agreement may be entered into before, at the time of, or after the filing of the articles of organization. Regardless of the timing, the agreement may, by its own terms, be effective upon formation of the company or at a later designated time or date, provided, however, that the operating agreement may not become effective prior to formation of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-504. Operating agreement for a one-member company.

(1) A written declaration or written guidelines signed by the sole member of a company constitutes an operating agreement for purposes of this chapter if the member designates in the declaration or guidelines that the written declaration or guidelines constitutes the operating agreement.

(2) The operating agreement of a company having only one member shall not be unenforceable by reason of there being only one person who is a party to the agreement.

Enacted by Chapter 260, 2001 General Session

48-2c-505. Interpretation and enforcement.

Any action to interpret, apply, or enforce the provisions of a company's articles of organization or operating agreement, or the duties, obligations, or liabilities between and among a company, its members and managers, or the rights or powers of, or restrictions on, the company, the members or managers, may be brought in the district court where the designated office of the company is located or, if the company fails to maintain a designated office, then in the district court of Salt Lake County.

Enacted by Chapter 260, 2001 General Session

48-2c-506. Amendment.

An operating agreement may be altered, amended, or repealed as provided in the operating agreement. If an operating agreement does not provide for a procedure for altering, amending, or repealing the operating agreement, the operating agreement may be altered, amended, or repealed only by the written consent of all members.

Enacted by Chapter 260, 2001 General Session

48-2c-601. General rule.

Except as provided in Section 48-2c-602, no organizer, member, manager, or employee of a company is personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the company or for the acts or omissions of the company or of any other organizer, member, manager, or employee of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-602. Exceptions to limited liability.

The following exceptions to limited liability under Section 48-2c-601 shall apply:

(1) All persons who assume to act as a company without complying with this chapter are jointly and severally liable for all debts and liabilities so incurred, except for debts incurred in the course of prefiling activities authorized under Section 48-2c-404.

(2) A member of a company is liable to the company:

(a) for the difference between the amount of the member's contributions to the company which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to the company which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.

(3) A member holds as trustee for the company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully or erroneously paid or conveyed to the member.

(4) Persons engaged in prefiling activities other than those authorized by Section 48-2c-404 shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities.

(5) (a) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(b) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.

(6) When a member has rightfully received a distribution, in whole or in part, of the member's capital account, the member remains liable to the company for any sum, not in excess of the amount of distribution, with interest, necessary to discharge the company's obligations to all creditors of the company who extended credit in reliance on any representation as to the financial condition of the company that included the amount so distributed and whose claims arose prior to the distribution.

Amended by Chapter 193, 2002 General Session

48-2c-603. Waiver of exceptions to limited liability.

The liabilities of a member described in Subsection 48-2c-602(2), (3), or (6) may be waived or compromised upon the consent of all other members. Any such waiver or compromise does not affect the rights of a creditor of the company:

(1) who extended credit in reliance on any representation as to the financial condition of the company prior to a distribution described in Subsection 48-2c-602(6) and without notice of such waiver or compromise; or

(2) whose claim arose prior to, and without notice of, such waiver or compromise.

Enacted by Chapter 260, 2001 General Session

48-2c-604. Waiver of protection of limited liability.

(1) A member of a company may waive the protection against personal liability of Section 48-2c-601 for any debt, obligation, or liability of a company by signing a waiver in the articles of organization or certificate of amendment to the articles of organization.

(2) The extent or scope of the waiver is determined by the signed waiver in the articles of organization or certificate of amendment.

Enacted by Chapter 260, 2001 General Session

48-2c-605. No formalities required to maintain limited liability.

The failure of a company to maintain records, to hold meetings, or to observe any formalities or requirements imposed by this chapter or by the articles of organization or the operating agreement is not a ground for imposing personal liability on any member, manager, or employee for any debt, obligation, or liability of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-606. Series of members, managers, or limited liability company interests.

(1) (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers, or interests in the company having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations.

(b) The separate rights, powers, and duties of a series shall be identified in the operating agreement.

(2) A series may have a business purpose or investment objective separate from the company.

(3) A series' debts, liabilities, obligations, and expenses are enforceable against the assets of that series only, and not against the assets of the company generally or any other series if:

(a) the operating agreement provides for separate treatment of the series;

(b) separate and distinct records are maintained concerning the series;

(c) the assets associated with the series are held and accounted for separately from the other assets of the company and any other series; and

(d) notice of the limitation on liability of a series is included in the company's articles of organization in accordance with Section 48-2c-607.

(4) None of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series are enforceable against the assets of a series if:

(a) the operating agreement provides for separate treatment of the series;

(b) separate and distinct records are maintained concerning the series;

(c) the assets associated with the series are held and accounted for separately from the other assets of the company and any other series; and

(d) notice of the limitation on liability of a series is included in the company's articles of organization in accordance with Section 48-2c-607.

(5) A series may contract on its own behalf and in its own name, including through a manager.

(6) Notwithstanding other provisions of this section:

(a) property and assets of a series may not be transferred to the company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and

(b) a tax or other liability of the company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the company generally or to another series within the company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.

Amended by Chapter 43, 2010 General Session

48-2c-607. Notice of series -- Articles of organization.

(1) Notice in a company's articles of organization of the limitation on liabilities of a series, as required by Section 48-2c-606, is sufficient whether or not the company has established any series at the time the notice is included in the articles of organization.

(2) The notice required by Section 48-2c-606:

(a) need not reference any specific series; and

(b) for articles of organization or an amendment to articles of organization made to include notice of series that is filed on or after May 11, 2010, notice in a company's articles of organization is sufficient for purposes of Subsection (1) only if the notice of series appears immediately following the provision stating the name of the company.

(3) The filing of the notice required by Section 48-2c-606 with the division constitutes notice of the limitation on liability of a series.

Amended by Chapter 43, 2010 General Session

48-2c-608. Agreement to be liable.

Notwithstanding Section 48-2c-601, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of one or more

series.

Enacted by Chapter 92, 2006 General Session

48-2c-609. Series related provisions in operating agreement.

(1) An operating agreement may provide for classes or groups of members or managers associated with a series with separate rights, powers, or duties as provided in Subsection 48-2c-606(1).

(2) An operating agreement may provide for the future creation of additional classes or groups of members or managers associated with a series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.

(3) An operating agreement may provide for the taking of an action without the vote or approval of any member or manager, or class or group of members or managers, including:

(a) an action to create a class or group of a series of interests in the company that was not previously outstanding; and

(b) amending the operating agreement.

(4) An operating agreement may provide that any member or class or group of members associated with a series has no voting rights.

(5) (a) An operating agreement may grant to all or certain identified members or managers, or a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter.

(b) Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or any other basis.

Enacted by Chapter 92, 2006 General Session

48-2c-610. Management of a series.

(1) Unless otherwise provided in an operating agreement, the management of a series is vested in the members associated with the series in proportion to the then-current percentage or other interest of members in the profits of the series owned by all of the members associated with the series.

(2) Unless otherwise provided in an operating agreement, the decision of members owning more than 50% of the then-current percentage or other interest in the profits controls.

(3) Notwithstanding Subsection (2), if an operating agreement provides for the management of the series in whole or in part by a manager, the management of the series is vested to that extent in the manager, who is chosen in the manner provided in the operating agreement.

(4) The manager of a series holds the offices and has the responsibilities accorded to the manager under the operating agreement.

(5) A series may have more than one manager.

(6) Subject to a manager's resignation, a manager ceases to be a manager with

respect to a series as provided in the operating agreement.

(7) Except as otherwise provided in an operating agreement, any event under this chapter or in an operating agreement that causes a manager to cease to be a manager with respect to a series does not, by itself, cause the manager to cease to be a manager of the limited liability company or with respect to any other series.

Enacted by Chapter 92, 2006 General Session

48-2c-611. Distributions concerning a series.

(1) Subject to an operating agreement, at the time a member associated with a series becomes entitled to receive a distribution with respect to the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

(2) An operating agreement may provide for the establishment of a record date for allocations and distributions concerning a series.

(3) Notwithstanding Section 48-2c-1005, a limited liability company may make a limited distribution with respect to a series only.

(4) No distribution may be made by a company under this section with respect to a series if, after giving effect to the distribution:

(a) the series would not be able to pay its debts as they become due in the usual and regular course of its business; or

(b) the value of the series' total assets would be less than the sum of:

(i) its total liabilities; and

(ii) unless the articles of organization or the operating agreement permit otherwise, the amount that would be needed, if the series were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of members receiving the distribution.

(5) The company may base a determination that a distribution is not prohibited under Subsection (4) either on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(6) For purposes of this section, amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program do not constitute a distribution.

(7) A member who receives a distribution in violation of this section is liable to the series for the amount of the distribution.

(8) Subject to Section 48-2c-1006, this section does not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

Enacted by Chapter 92, 2006 General Session

48-2c-612. Member removal from a series -- Effect.

(1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise any rights or powers of a member with respect to the series upon the assignment of all of the member's interest in the company with respect to the series.

(2) Unless otherwise provided in an operating agreement, any event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:

(a) cause the member to cease to be associated with any other series;

(b) terminate the continued membership of a member in the limited liability company; or

(c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

Enacted by Chapter 92, 2006 General Session

48-2c-613. Termination of series.

(1) Subject to Section 48-2c-1201, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company.

(2) The termination of a series does not affect the limitation on liabilities of the series provided by Section 48-2c-606.

(3) A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-2c-1201 or otherwise upon the first to occur of the following:

(a) the time specified in the operating agreement;

(b) the happening of events specified in the operating agreement;

(c) unless otherwise provided in the operating agreement, the affirmative vote or written consent of:

(i) (A) the members of the limited liability company associated with the series; or

(B) if there is more than one class or group of members associated with the series, by each class or group of members associated with the series; and

(ii) (A) members associated with the series who own more than 2/3 of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series; or

(B) the members in each class or group of the series, as appropriate; or

(d) the termination of the series under Section 48-2c-614.

Enacted by Chapter 92, 2006 General Session

48-2c-614. Court-decreed termination of series.

On application by or for a member or manager associated with a series, the district court may decree termination of the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement.

Enacted by Chapter 92, 2006 General Session

48-2c-615. Participation in winding up.

(1) Notwithstanding Section 48-2c-1303, unless otherwise provided in the operating agreement, the series' affairs may be wound up by the following:

(a) a manager associated with a series who has not wrongfully terminated the series; or

(b) if there is no manager under Subsection (1)(a):

(i) the members associated with the series, or a person approved by the members associated with the series, who own more than 50% of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series; or

(ii) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series owning more than 50% of the then-current percentage or other interest in the profits of the series owned by all of the members in each class or group associated with the series.

(2) (a) The district court may, upon cause shown, wind up the affairs of the series upon application of any member associated with the series, the member's personal representative, or the member's assignee.

(b) If the district court winds up the affairs of a series under Subsection (2)(a), the district court may appoint a liquidating trustee.

(3) (a) A person winding up the affairs of a series may, in the name of the limited liability company and on behalf of the limited liability company and the series, take any action with respect to the series that is allowed by Part 13, Winding Up.

(b) A person winding up the affairs of a series shall comply with Part 13, Winding Up.

(c) The winding up the affairs of a series in accordance with this section does not:

(i) affect the liability of members; or

(ii) impose liability on a liquidating trustee.

Enacted by Chapter 92, 2006 General Session

48-2c-616. Foreign limited liability company -- Series.

(1) If a foreign limited liability company that is registering to do business in the state is governed by an operating agreement establishing or providing for the establishment of a series, that fact shall be stated on the application for authority to transact business in the state.

(2) (a) A company shall identify on an application for authority to transact business in the state which of the protections for the series and company found in Section 48-2c-606 apply to a series.

(b) If different protections found in Section 48-2c-606 apply to different series of a company, the application for authority to transact business in the state shall identify:

(i) the protections that apply to each existing series; and

(ii) the protections that will apply to any later-created series.

Enacted by Chapter 92, 2006 General Session

48-2c-701. Nature of member interest.

(1) A member's interest in a company is personal property regardless of the nature of the property owned by the company.

(2) A member has no interest in specific property of a company.

Enacted by Chapter 260, 2001 General Session

48-2c-702. Initial members.

(1) In connection with the formation of a company, a person becomes a member of the company upon the earliest to occur of the following:

(a) when the person signs the articles of organization as a member;

(b) when the person signs the operating agreement as a member; or

(c) when:

(i) the person evidences the intent to become a member, either orally, in writing, or by other action such as transferring property or paying money to the company for an interest in the company; and

(ii) the person's admission as a member is reflected in the records of the company or is otherwise acknowledged by the company.

(2) Notwithstanding Subsection (1), a person may not become a member of a company prior to formation of the company.

Amended by Chapter 141, 2005 General Session

48-2c-703. Additional members.

After the formation of a company, a person is admitted as an additional member of the company as provided in the operating agreement or, if the operating agreement does not provide for additional members, then:

(1) in the case of a person who is not an assignee of an interest in the company, including a person acquiring an interest directly from the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members;

(2) in the case of a person who is an assignee of an interest in the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members and upon the effective date of the person's admission as reflected in the records of the company;

(3) unless otherwise provided in a plan of merger, in the case of a person acquiring an interest in a surviving company pursuant to a merger approved under Section 48-2c-1407, at the time provided in and upon compliance with the operating agreement of the surviving company; or

(4) unless otherwise provided in articles of conversion, in the case of a person acquiring an interest in a company pursuant to a conversion approved under Section 48-2c-1404, at the time provided in and upon compliance with the operating agreement of the company resulting from the conversion.

Enacted by Chapter 260, 2001 General Session

48-2c-704. Meetings of members.

Unless otherwise provided in the articles of organization or operating agreement, no meetings need be held for actions taken by members. If meetings of members are allowed or required under the articles of organization or operating agreement, then, unless otherwise provided in the articles of organization or operating agreement:

(1) a meeting of members may be called by any manager in a manager-managed company or by members in any company holding at least 25% interest in profits of the company;

(2) any business may be transacted at any meeting of members which is properly called;

(3) notice of a meeting of members must be given to each member at least five days prior to the meeting and shall give the date, place, and time of the meeting;

(4) notice of a meeting of members may be given orally or in writing or by electronic means;

(5) the person calling the meeting may designate any place within or without the state as the place for the meeting. If no place is designated, the place of the meeting shall be the principal office of the company or, if there is no principal office in this state, in Salt Lake County;

(6) only persons who are members of record at the time notice of a meeting is given shall be entitled to notice or to vote at the meeting, except that a fiduciary, such as a trustee, personal representative, or guardian, shall be entitled to act in such capacity on behalf of a member of record if evidence of such status is presented to the company and except that a surviving joint tenant shall be entitled to receive notice and act where evidence of the other joint tenant's death is presented to the company;

(7) a quorum must be present in person or by proxy at a meeting of members for any business to be transacted and a quorum shall consist of members holding at least 51% interest in profits of the company;

(8) the members present at any meeting at which a quorum is present may continue to transact business notwithstanding the withdrawal of members from the meeting in such numbers that less than a quorum remains;

(9) a member may participate in and be considered present at a meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other, or otherwise communicate with each other during the meeting;

(10) voting at a meeting shall be determined by percentage interests in the profits of the company; and

(11) a proxy, to be effective, must be in writing and signed by the member and must be filed with the secretary of the meeting before or at the time of the meeting and shall be valid for no more than 11 months after it was signed unless otherwise provided in the proxy.

Amended by Chapter 364, 2008 General Session

48-2c-705. Voting.

(1) Subject to the provisions of Section 48-2c-803, the articles of organization or operating agreement may grant to all or a specified class or group of members the right

to consent, vote, or agree, on a percentage interest basis or a per capita basis or other basis, upon any matter.

(2) Any member may vote in person or by proxy.

Enacted by Chapter 260, 2001 General Session

48-2c-706. Action by members without a meeting.

(1) Unless otherwise provided in the articles of organization or operating agreement, and subject to the limitations of Subsection (5), any action which may be taken by the members may be taken without any meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the members holding interests in the company not less than the minimum percentage that would be necessary to authorize or take that action.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least five days before the consummation of the transaction, action, or event authorized by the member action to those entitled to vote who have not consented in writing.

(b) The notice must contain or be accompanied by a description of the transaction, action, or event.

(3) Provided the notice described in Subsection (2) is given, action taken by the members pursuant to this section is effective as of the date the last written consent necessary to authorize or take the action is received by the company, unless all of the written consents specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the company has received written consents as contemplated by Subsection (1), signed by all members entitled to vote with respect to the action, the effective date of the action may be any date that is specified in all of the written consents.

(4) Unless otherwise provided in the operating agreement, any consent or writing may be received by the company by any electronically transmitted or other form of communication that provides the company with a complete copy thereof, including the signature thereto.

(5) Any member or an authorized representative of that member may revoke a consent by a signed writing describing the action and stating that the member's prior consent is revoked, if the writing is received by the company prior to the effective date and time of the action.

(6) A member action taken pursuant to this section is not effective unless all written consents on which the company relies for taking an action pursuant to Subsection (1) are received by the company within a 60-day period and not revoked pursuant to Subsection (5).

(7) Written consent of the members entitled to vote constitutes approval of the members and may be described as such in any document.

Enacted by Chapter 260, 2001 General Session

48-2c-707. Classes of members.

(1) The articles of organization or operating agreement of a company may

provide for classes or groups of members having such relative rights, powers, and duties as prescribed therein, and may make provision for the future creation of any such classes or groups.

(2) Except as provided in Subsection 48-2c-803(2), the articles of organization or operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members and may provide that any particular class or group shall have no voting rights.

Amended by Chapter 193, 2002 General Session

48-2c-708. Cessation of membership.

(1) A person who is a member of a company ceases to be a member of the company and the person or the person's successor in interest attains the status of an assignee as set forth in Section 48-2c-1102, upon the occurrence of one or more of the following events:

(a) the death of the member, except that the member's personal representative, executor, or administrator may exercise all of the member's rights for the purpose of settling the member's estate, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(b) the incapacity of the member, as defined in Subsection 75-1-201(22), except that the member's guardian or conservator or other legal representative may exercise all of the member's rights for the purpose of administering the member's property, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(c) the member withdraws by voluntary act from the company as provided in Section 48-2c-709;

(d) upon the assignment of the member's entire interest in the company;

(e) the member is expelled as a member pursuant to Section 48-2c-710; or

(f) unless otherwise provided in the operating agreement, or with the written consent of all other members:

(i) at the time the member:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary petition in bankruptcy;

(C) becomes the subject of an order for relief in bankruptcy proceedings;

(D) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in Subsections (1)(f)(i)(A) through (D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(ii) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not

been dismissed, or if within 90 days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any stay, the appointment is not vacated;

(iii) in the case of a member that is another limited liability company, the filing of articles of dissolution or the equivalent for that company or the judicial dissolution of that company or the administrative dissolution of that company and the lapse of any period allowed for reinstatement;

(iv) in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period allowed for reinstatement; or

(v) in the case of a member that is a limited partnership, the dissolution and commencement of winding up of the limited partnership.

(2) The articles of organization or operating agreement may provide for other events the occurrence of which result in a person's ceasing to be a member of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-709. Withdrawal of a member.

A member may withdraw from a company at the time or upon the happening of events specified in and in accordance with the articles of organization or operating agreement. If the articles of organization or operating agreement do not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the dissolution and completion of winding up of the company, without the written consent of all other members at the time.

Enacted by Chapter 260, 2001 General Session

48-2c-710. Expulsion of a member.

A member of a company may be expelled:

(1) as provided in the company's operating agreement;

(2) by unanimous vote of the other members if it is unlawful to carry on the company's business with the member; or

(3) on application by the company or another member, by judicial determination that the member:

(a) has engaged in wrongful conduct that adversely and materially affected the company's business;

(b) has willfully or persistently committed a material breach of the articles of organization or operating agreement or of a duty owed to the company or to the other members under Section 48-2c-807; or

(c) has engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member.

Enacted by Chapter 260, 2001 General Session

48-2c-801. Management structure.

A company may be managed either by one or more managers, in which case it shall be considered to be a "manager-managed company," or it may be managed by all of its members, in which case it shall be considered to be a "member-managed company."

(1) The choice of management structure shall be designated in the articles of organization for the company. If the articles of organization fail to designate the management structure or do not clearly designate the management structure, management of the company shall be vested in its members.

(2) Unless the operating agreement provides otherwise, a manager-managed company shall become a member-managed company upon the death, withdrawal, or removal of the sole remaining manager, or if one of the events described in Subsection 48-2c-708(1)(d), (e), or (f) occurs with regard to the sole remaining manager, unless another manager is appointed by the members within 90 days after the occurrence of any such event.

(3) The dissolution of a company does not alter the authority of the managers or members, as the case may be, to wind up the business and affairs of the company.

Amended by Chapter 193, 2002 General Session

48-2c-802. Agency authority of members and managers.

(1) Except as provided in Subsection (3), in a member-managed company:

(a) each member is an agent of the company for the purpose of its business;

(b) an act of a member, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company, unless the member had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the member was dealing knew or otherwise had notice that the member lacked authority; and

(c) an act of a member which is not apparently for carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the other members in accordance with Section 48-2c-803.

(2) Except as provided in Subsection (3), in a manager-managed company:

(a) each manager is an agent of the company for the purpose of its business;

(b) a member is not an agent of the company for the purpose of its business solely by reason of being a member;

(c) an act of a manager, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company unless the manager had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the manager was dealing knew or otherwise had notice that the manager lacked authority; and

(d) an act of a manager which is not apparently for carrying on in the ordinary

course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the members in accordance with Subsection 48-2c-803(2) or (3).

(3) Notwithstanding the provisions of Subsections (1) and (2), unless the articles of organization expressly limit their authority, any member in a member-managed company, or any manager in a manager-managed company, may sign, acknowledge, and deliver any document transferring or affecting the company's interest in real or personal property, and if the authority is not so limited, the document shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person who signs and delivers the document.

Enacted by Chapter 260, 2001 General Session

48-2c-803. Management by members.

In a member-managed company, each member shall be subject to the duties described in Section 48-2c-807 and, unless otherwise provided in this chapter, in the articles of organization, or an operating agreement:

(1) the affirmative vote, approval, or consent of members holding a majority of profits interests in the company shall be required to decide any matter connected with the business of the company;

(2) the affirmative vote, approval, or consent of all members shall be required to:

(a) amend the articles of organization, except to make ministerial amendments including:

(i) amendments made only to reflect actions previously taken with the requisite approval, such as a change in managers; or

(ii) to change an address;

(b) amend the operating agreement, except to make ministerial amendments, including:

(i) amendments made only to reflect actions previously taken with the requisite approval, such as a change in managers; or

(ii) to change an address; or

(c) (i) authorize a member or any other person to do any act on behalf of the company that contravenes the articles of organization or operating agreement; and

(ii) after authorizing an act under Subsection (2)(c)(i) to terminate the authority so granted; and

(3) the affirmative vote, approval, or consent of members holding 2/3 of the profits interests in the company shall be required to bind the company to any of the following actions:

(a) (i) authorizing a member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business, or business of the kind carried on by the company; and

(ii) after authorizing an act under Subsection (3)(a)(i) to terminate the authority so granted;

(b) making a current distribution to members;

(c) resolving any dispute connected with the usual and regular course of the company's business;

(d) making a substantial change in the business purpose of the company;

(e) a conversion of the company to another entity;

(f) a merger in which the company is a party to the merger;

(g) any sale, lease, exchange, or other disposition of all or substantially all of the company's property other than in the usual and regular course of the company's business;

(h) any mortgage, pledge, dedication to the repayment of indebtedness, whether with or without recourse, or other encumbering of all or substantially all of the company's property other than in the usual and regular course of the company's business; or

(i) any waiver of a liability of a member under Section 48-2c-603.

Amended by Chapter 141, 2005 General Session

48-2c-803.1. Individual profits interest.

For the purpose of determining compliance with a provision of this chapter that conditions rights, consents, or actions on the participation of members holding a certain percentage of the company's profits interests, unless otherwise provided in the articles of organization or the operating agreement, each member's profits interest shall be determined based on the members' capital account balances on the date on which compliance is measured.

Enacted by Chapter 141, 2005 General Session

48-2c-804. Management by managers.

In a manager-managed company, each manager and each member shall be subject to Section 48-2c-807 and:

(1) (a) the initial managers shall be designated in the articles of organization; and

(b) after the initial managers, the managers shall be those persons identified in documents filed with the division including:

(i) amendments to the articles of organization;

(ii) the annual reports required under Section 48-2c-203; and

(iii) the statements required or permitted under Section 48-2c-122;

(2) when there is a change in the management structure from a member-managed company to a manager-managed company, the managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change;

(3) each manager who is a natural person must have attained the age of majority under the laws of this state;

(4) no manager shall have authority to do any act in contravention of the articles of organization or the operating agreement, except as provided in Subsection (6)(g);

(5) a manager who is also a member shall have all of the rights of a member;

(6) unless otherwise provided in the articles of organization or operating agreement of the company:

(a) except for the initial managers, each manager shall be elected at any time by

the members holding at least a majority of the profits interests in the company, and any vacancy occurring in the position of manager shall be filled in the same manner;

(b) the number of managers:

(i) shall be fixed by the members in the operating agreement; or

(ii) shall be the number designated by members holding at least a majority of the profits interests in the company if the operating agreement fails to designate the number of managers;

(c) each manager shall serve until the earliest to occur of:

(i) the manager's death, withdrawal, or removal;

(ii) an event described in Subsection 48-2c-708(1)(f); or

(iii) if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708(1)(d) or (e);

(d) a manager need not be a member of the company or a resident of this state;

(e) any manager may be removed with or without cause by the members, at any time, by the decision of members owning a majority of the profits interests in the company;

(f) there shall be only one class of managers; and

(g) approval by:

(i) all of the members and all of the managers shall be required for matters described in Subsection 48-2c-803(2); and

(ii) members holding 2/3 of the profits interests in the company, and 2/3 of the managers shall be required for all matters described in Subsection 48-2c-803(3).

Amended by Chapter 141, 2005 General Session

48-2c-805. Delegation of authority and power to manage.

Unless otherwise provided in the articles of organization or operating agreement, a member or manager of a company may not delegate to one or more other persons the member's or manager's, as the case may be, authority and power to manage the business and affairs of the company, except that an entity may designate an authorized representative to act for it. However, if a delegation is permitted in the articles of organization or operating agreement, then the delegation must comply with the following:

(1) any such delegation must be in writing including, but not limited to, a management agreement or another agreement;

(2) the scope and duration of the authority delegated shall be specified in the writing;

(3) the power to revoke the delegation at any time for any or no reason shall be retained by the member or manager;

(4) any such delegation shall not include any power of substitution without the written consent of the member or manager; and

(5) any such delegation by a member or manager shall not cause the member or manager to cease to be a member or manager, as the case may be.

Enacted by Chapter 260, 2001 General Session

48-2c-806. Reliance by member or manager on reports and information.

Unless a member or manager has knowledge concerning the matter in question that makes reliance unwarranted, the member or manager shall be fully protected in relying in good faith upon:

(1) the records of the company; and

(2) the information, opinions, reports, or statements presented to the company by any of its other managers, members, employees or committees, or by any other person, as to matters the member or manager reasonably believes are within the other person's professional or expert competence, including, but not limited to, information, opinions, reports, or statements as to the value and amount of assets, liabilities, profits or losses of the company, or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Enacted by Chapter 260, 2001 General Session

48-2c-807. Duties of managers and members.

(1) A member or manager shall not be liable or accountable in damages or otherwise to the company or the members for any action taken or failure to act on behalf of the company unless the act or omission constitutes:

(a) gross negligence;

(b) willful misconduct; or

(c) a breach of a higher standard of conduct that would result in greater exposure to liability for the member or manager that is established in the company's articles of organization or operating agreement.

(2) Each member and manager shall account to the company and hold as trustee for it any profit or benefit derived by that person without the consent of members holding a majority interest in profits in the company, or a higher percentage of interests in profits provided for in the company's articles of organization or operating agreement, from:

(a) any transaction connected with the conduct of the company's business or winding up of the company; or

(b) any use by the member or manager of company property, including confidential or proprietary information of the company or other matters entrusted to the person in the capacity of a member or manager.

(3) Unless otherwise provided in a company's articles of organization or operating agreement, a member of a manager-managed company who is not also a manager owes no fiduciary duties to the company or to the other members solely by reason of acting in the capacity of a member.

Amended by Chapter 141, 2005 General Session

48-2c-808. Actions by multiple managers.

Unless otherwise provided in the articles of organization or operating agreement, where there are multiple managers, on any matter that is to be voted on by the managers:

(1) the managers may take action without a meeting, without prior notice, and

without a vote, if a consent in writing, setting forth the action so taken, is signed by all of the managers; and

(2) the managers may not vote by proxy.

Enacted by Chapter 260, 2001 General Session

48-2c-809. Removal by judicial proceeding.

(1) The district court of the county in this state where a company's principal office is located, or if it has no principal office in this state, Salt Lake County, may remove a manager of a manager-managed company in a proceeding commenced either by the company or by its members holding at least 25% of the interests in profits of the company if the court finds that:

(a) the manager engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the company; and

(b) removal is in the best interests of the company.

(2) The court that removes a manager may bar the manager from reelection for a period prescribed by the court.

(3) If members commence a proceeding under Subsection (1) above, they shall make the company a party defendant.

(4) Subsections (1), (2), and (3) shall also apply to enable the removal of a member in a member-managed company from having any management authority or powers on behalf of the company.

(5) If the court orders removal of a manager or member under this section, the clerk of the court shall deliver a certified copy of the order to the division for filing.

Amended by Chapter 364, 2008 General Session

48-2c-901. Form of contribution.

The contribution of a member to the company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, or any combination of the foregoing.

Enacted by Chapter 260, 2001 General Session

48-2c-902. Assessments for additional contributions.

Except as otherwise provided in the articles of organization, operating agreement, or other writing binding on the members, no additional contributions shall be required of any member and no member shall be subject to assessment for additional contributions to the company. Nevertheless, where an assessment obligation is provided for, the obligation shall not be construed as conferring any rights upon any creditor or upon any person not a party to the operating agreement.

Enacted by Chapter 260, 2001 General Session

48-2c-903. Capital accounts.

(1) (a) A capital account shall be maintained for each member.

(b) The capital account of each member represents that member's share of the net assets of the company.

(c) Except as otherwise provided in the articles of organization or operating agreement, the capital accounts of all members shall be adjusted, either increased or decreased, to reflect the revaluation of company assets, including intangible assets such as goodwill, on the company's books in connection with any of the following events:

(i) a capital contribution, other than a de minimis contribution, made by or on behalf of a new member or an additional capital contribution, other than a de minimis contribution, made by or on behalf of an existing member;

(ii) a distribution, other than a de minimis amount, made in partial or complete redemption of a member's interest in the company;

(iii) the dissolution and winding up of the company;

(iv) a merger of the company; or

(v) the grant of an interest in the company other than a de minimis interest, on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the company by:

(A) an existing member acting in the capacity of a member; or

(B) a new member acting in a member capacity or in anticipation of becoming a member.

(2) Upon any revaluation event under Subsection (1):

(a) the book value of company assets shall be adjusted to fair market value; and

(b) unrealized income, gain, loss, or deduction inherent in those company assets that have not been previously reflected in the members' capital accounts shall be allocated to the members' capital accounts.

Amended by Chapter 141, 2005 General Session

48-2c-904. Valuation of member's interest in the company.

Except as otherwise provided in the operating agreement, the fair market value of a member's interest in the company at any given time shall be the value at which the interest would change hands in an arms-length transaction between an informed and willing buyer and an informed and willing seller, neither being under any compulsion to buy or to sell, taking into consideration all relevant facts and circumstances, including the provisions of the articles of organization and operating agreement and all relevant discounts or premiums.

Enacted by Chapter 260, 2001 General Session

48-2c-905. Redemption of interest.

(1) Subject to Section 48-2c-1005, a member may rightfully demand payment from the company of the fair market value of the member's interest in the company only:

(a) upon the dissolution and completion of winding up of the company; or

(b) upon the date or occurrence of an event specified in the articles of organization or operating agreement for redemption of the member's interest.

(2) Except as otherwise provided in the articles of organization or operating agreement or with consent of all members, a member, regardless of the nature of the member's contribution, has only the right to receive cash in redemption of the member's interest in the company.

Enacted by Chapter 260, 2001 General Session

48-2c-906. Allocation of profits and losses.

The profits and losses of a company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Enacted by Chapter 260, 2001 General Session

48-2c-1001. Allocation of current distributions.

Except as otherwise provided in the operating agreement, current distributions of profits and gains of a company shall be in the form of cash. Current distributions shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, current distributions shall be allocated among the members in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Enacted by Chapter 260, 2001 General Session

48-2c-1002. Timing of distributions.

Distributions to members shall be made at the times or upon the happening of the events specified in the operating agreement. If the operating agreement does not otherwise provide, each current distribution shall be made to all members concurrently, or at other times determined by the members in a member-managed company, or by the managers in a manager-managed company.

Enacted by Chapter 260, 2001 General Session

48-2c-1003. Liquidating distributions.

Distributions to the members in connection with the dissolution and winding up of a company shall be made in accordance with Section 48-2c-1308.

Enacted by Chapter 260, 2001 General Session

48-2c-1004. Right to distributions.

At the time a member becomes entitled to receive a distribution from the company, the member has the status of, and is entitled to all remedies available to, a creditor of the company with respect to the distribution.

Enacted by Chapter 260, 2001 General Session

48-2c-1005. Limitations on distributions.

(1) No distribution may be made by a company if, after giving effect to the distribution:

(a) the company would not be able to pay its debts as they become due in the usual and regular course of its business; or

(b) the value of the company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement permits otherwise, the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of members receiving the distribution.

(2) The company may base a determination that a distribution is not prohibited under Subsection (1) either on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) The effect of a distribution under Subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 30 days after the date of authorization; or

(b) the date the payment is made if it occurs more than 30 days after the date of authorization.

Enacted by Chapter 260, 2001 General Session

48-2c-1006. Duty to return wrongful distributions.

If a member receives a distribution by mistake or in violation of the articles of organization, the operating agreement, or Section 48-2c-1005, that member is obligated to return the wrongful distribution to the company and shall remain liable to the company for a period of five years thereafter for the amount of the distribution wrongfully made provided a proceeding to recover the distribution from the member is commenced prior to the expiration of the five-year period.

Enacted by Chapter 260, 2001 General Session

48-2c-1007. Distribution in kind.

(1) Except as otherwise provided in the articles of organization or operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the company in any form other than cash.

(2) Except for an asset contributed by the member or as otherwise provided in the articles or organization or operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1008. Unclaimed distributions.

If a company has mailed three successive distributions to a member addressed to the member's address shown on the company's current record of members and the distributions have been returned as undeliverable, no further attempt to deliver distributions to that member need be made until another address for the member is made known to the company, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the member at the other address.

Enacted by Chapter 260, 2001 General Session

48-2c-1101. Assignment of interests.

Unless otherwise provided in the articles of organization or operating agreement, a member's interest in a company is assignable in whole or in part. An assignment of an interest in a company does not of itself dissolve the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1102. Rights of assignee.

An assignment of an interest in a company does not entitle the assignee to participate in the management and affairs of the company or to vote or to become a member or to exercise any rights of a member or manager. An assignment only entitles the assignee to receive, to the extent assigned, any share of profits and losses and distributions to which the assignor would be entitled.

Enacted by Chapter 260, 2001 General Session

48-2c-1103. Rights of creditor of member.

(1) (a) On application to a court of competent jurisdiction by any judgment creditor of a member or of a member's assignee, the court may charge the interest in the company of the member or assignee with payment of the unsatisfied amount of the judgment plus interest.

(b) A court charging the interest of a member or assignee under Subsection (1)(a) may then or later appoint a receiver of the share of distributions due or to become due to the judgment debtor in respect of the interest in the company.

(c) A judgment creditor and receiver under this section shall have only the rights of an assignee.

(d) A court may make all other orders, directions, accounts, and inquiries a judgment debtor might make or that the circumstances of the case may require.

(2) (a) A charging order constitutes a lien on the judgment debtor's interest in the company.

(b) A court may order a foreclosure of the interest subject to a charging order entered under this section at any time.

(c) The purchaser at a foreclosure sale under Subsection (2)(b) has only the

rights of an assignee if there are other members in the company.

(d) Notwithstanding Subsection (2)(c), if the member whose interest is charged under this section is the sole member of the company when the charging order was entered:

(i) the purchaser at a foreclosure sale acquires all rights of the member, including voting rights; and

(ii) the member is considered to have consented to the admission of the purchaser as a member of the company.

(3) Unless otherwise provided in the articles of organization or operating agreement for the company, at any time before foreclosure an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than company property, by one or more of the other members; or

(c) by the company with the consent of all of the members whose interests are not so charged.

(4) This section does not deprive a member of a right under exemption laws with respect to the member's interest in a company.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's interest in a company.

(6) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the company.

Amended by Chapter 141, 2005 General Session

48-2c-1104. Right of assignee to become member.

(1) Except as otherwise provided in the articles of organization or operating agreement, an assignee of an interest in a company may become a member only upon the consent of all members and upon signing the operating agreement or other writing by which the assignee agrees to be bound by the operating agreement.

(2) An assignee who has become a member has, with respect to the interest assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, the operating agreement, and this chapter.

(3) An assignee who becomes a member is liable for any obligations of his assignor to make contributions and to return distributions as provided in this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member but has constructive notice of any obligations described in the articles of organization or operating agreement of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1105. Liability of assignor continues.

An assignor of an interest in a company is not released from liability to the

company by reason of the assignment or by reason of the assignee's becoming a member.

Enacted by Chapter 260, 2001 General Session

48-2c-1106. Invalid transfers.

Any transfer or assignment of a member's interest in a company in violation of this part is void.

Enacted by Chapter 260, 2001 General Session

48-2c-1201. Events of dissolution.

A company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the company, pursuant to Subsection 48-2c-403(4)(c) or (5), expires;

(2) at such times as the company fails to have at least one member;

(3) by written agreement signed by all members;

(4) upon the occurrence of a dissolution event specified in the articles of organization or operating agreement;

(5) upon administrative dissolution under Section 48-2c-1207, subject to right of reinstatement under Section 48-2c-1208; or

(6) upon entry of a decree of judicial dissolution under Section 48-2c-1213.

Amended by Chapter 141, 2005 General Session

48-2c-1202. Voluntary cancellation of certificate.

Articles of organization may be canceled voluntarily at any time by consent of all members or their successors in interest by submitting to the division for filing a certificate of cancellation that sets forth:

(1) the name of the company;

(2) the date of filing of its articles of organization;

(3) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and

(4) any other information the person filing the certificate determines to be appropriate.

Enacted by Chapter 260, 2001 General Session

48-2c-1203. Effect of dissolution.

(1) A dissolved company continues its existence but may not carry on any business or activities except as appropriate to wind up and liquidate its business and affairs, as provided in Part 13 of this chapter.

(2) Dissolution of a company does not:

(a) transfer title to the company's property;

(b) prevent transfer of an interest in the company;

(c) subject its members or managers to standards of conduct different from those prescribed in Part 8;

(d) change:

(i) limited liability provided under Part 6 of this chapter;

(ii) voting requirements for its members or managers;

(iii) provisions for selection, resignation, or removal of its managers; or

(iv) provisions for amending its articles of organization or operating agreement;

(e) prevent commencement of a proceeding by or against the company in its company name;

(f) abate or suspend a proceeding pending by or against the company on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1204. Articles of dissolution.

(1) After any event of dissolution, other than the events described in Subsection 48-2c-1201(5) or (6), the company, or a person acting for the company, shall deliver to the division for filing articles of dissolution setting forth:

(a) the name of the company;

(b) the address to which service of process may be mailed pursuant to Title 16, Chapter 17, Model Registered Agents Act;

(c) the effective date of the dissolution;

(d) the event causing the dissolution;

(e) if dissolution occurred by written agreement of the members, a statement to that effect; and

(f) any additional information the division determines is necessary or appropriate.

(2) A company is dissolved upon the effective date of dissolution set forth in its articles of dissolution.

Amended by Chapter 364, 2008 General Session

48-2c-1205. Revocation of voluntary dissolution.

(1) Where the event of dissolution is the written agreement of the members, a company may revoke its dissolution within 120 days after the effective date of the dissolution.

(2) Revocation of the voluntary dissolution must be approved by all of the members.

(3) After the revocation of voluntary dissolution is approved by all of the members, the company may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the company;

(b) the effective date of the dissolution that was revoked; and

(c) the date that the revocation of dissolution was authorized by the members.

(4) Revocation of the voluntary dissolution is effective when the articles of revocation of dissolution are filed with the division. A provision may not be made for a delayed effective date for revocation of voluntary dissolution.

(5) When the revocation of voluntary dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the company may carry on its business as if the dissolution had never occurred.

Enacted by Chapter 260, 2001 General Session

48-2c-1206. Grounds for administrative dissolution.

The division may dissolve a company under Section 48-2c-1207 if:

(1) the company does not pay when due, any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(2) the company does not file its annual report with the division when it is due;

(3) the company is without a registered agent or registered office in this state; or

(4) the company fails to give notice to the division that:

(a) its registered agent has been changed;

(b) its registered agent has resigned; or

(c) the company's period of duration has expired.

Amended by Chapter 364, 2008 General Session

48-2c-1207. Procedure for and effect of administrative dissolution.

(1) If the division determines that one or more grounds exist under Section 48-2c-1206 for dissolving a company, it shall mail to the company written notice of:

(a) the division's determination that one or more grounds exist for dissolving the company; and

(b) the grounds for dissolving the company.

(2) (a) If the company does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided in Subsection (1), the division shall administratively dissolve the company.

(b) If a company is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved company at its principal office, stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail a copy of the notice of administrative dissolution including a statement of the grounds for the administrative dissolution, to:

(i) the registered agent of the dissolved company; or

(ii) if there is no registered agent of record, or if the mailing to the registered agent is returned as undeliverable, at least one member if the company is member-managed or one manager of the company if the company is manager-managed, at their addresses as reflected on the notice, annual report, or document most recently filed with the division.

(d) A company's effective date of administrative dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the effective date of dissolution, any assumed names filed on behalf of

the dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and any assumed names filed on its behalf are not available for two years from the effective date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in accordance with Section 48-2c-1208, the registration of the name of the company and any assumed names filed on its behalf are reinstated back to the effective date of dissolution.

(3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved under this section continues its existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Part 13, Winding Up; and

(ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and 48-2c-1306.

(b) If the company is reinstated in accordance with Section 48-2c-1208, business conducted by the company during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a company does not terminate the authority of its registered agent.

(5) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the principal office of the company, if the notice is required to be mailed to the company;

(ii) the registered agent of the company, if the notice is required to be mailed to the registered agent; or

(iii) any member if the company is member-managed, or to any manager of the company if the company is manager-managed, if the notice is required to be mailed to a member or manager of the company.

Amended by Chapter 141, 2009 General Session

48-2c-1208. Reinstatement following administrative dissolution.

(1) A company dissolved under Section 48-2c-1207 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of the company's dissolution;

(b) the company name as of the effective date of dissolution;

(c) that the ground for dissolution either did not exist or has been eliminated;

(d) the name under which the company is being reinstated, if different than the

name stated in Subsection (1)(b);

(e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 48-2c-106;

(f) that all fees or penalties imposed pursuant to this chapter or otherwise owed by the company to the state have been paid;

(g) the address of the principal office of the company; and

(h) the information required by Subsection 16-17-203(1).

(2) The company shall include in or with the application for reinstatement the written consent to appointment by the designated registered agent.

(3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the company in the manner provided in Subsection 48-2c-1207(5) written notice of:

(a) the revocation; and

(b) the effective date of the revocation.

(4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:

(a) an act of the company during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

(b) the company may carry on its business, under the name stated pursuant to Subsection (1)(b) or (1)(d), as if the administrative dissolution had never occurred.

Amended by Chapter 141, 2009 General Session

48-2c-1209. Appeal from denial of reinstatement.

If the division denies a company's application for reinstatement under Section 48-2c-1208 following administrative dissolution, the division shall mail to the company in the manner provided in Subsection 48-2c-1207(5) written notice:

(1) setting forth the reasons for denying the application; and

(2) stating that the company has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 141, 2009 General Session

48-2c-1210. Grounds for judicial dissolution.

(1) A company may be dissolved in a proceeding filed by the attorney general or the director of the division if it is established that the company:

(a) obtained the filing of its articles of organization through fraud;

(b) continually exceeded or abused the authority conferred upon it by law;

(c) committed a violation of any provision of law whereby it has forfeited its charter;

(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of this state; or

(f) failed to amend its articles of organization as required by Section 48-2c-405.

(2) A company may be dissolved in a proceeding filed by any member if it is established
that:

(a) the managers are deadlocked in management of company affairs and the members are unable to break the deadlock, irreparable injury to the company is threatened or being suffered, or the business and affairs of the company can no longer be conducted to the advantage of the members generally, because of the deadlock;

(b) the managers or those in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the members are deadlocked in voting power and the deadlock has continued for a period of at least six months;

(d) the company assets are being misapplied or wasted; or

(e) it is not reasonably practical to carry on the business of the company in conformity with its articles of organization and operating agreement.

(3) A company may be dissolved in a proceeding filed by a creditor of the company if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the company is insolvent; or

(b) the company is insolvent and the company has admitted in writing that the creditor's claim is due and owing.

(4) A company may commence a proceeding under this section when the company seeks to have its voluntary dissolution continued under court supervision.

Enacted by Chapter 260, 2001 General Session

48-2c-1211. Procedure for judicial dissolution.

(1) (a) A proceeding by the attorney general or director of the division to dissolve a company shall be brought in:

(i) the district court of the county in this state in which the principal office is located; or

(ii) if it has no principal office in this state, the district court of Salt Lake County.

(b) A proceeding brought by any other party named in Section 48-2c-1210 shall be brought in the district court of the county in this state where the company's principal office is or, if it has no principal office in this state, Salt Lake County.

(2) It is not necessary to make any member or manager a party to a proceeding to dissolve a company unless relief is sought against them personally.

(3) A court in a proceeding brought to dissolve a company may:

(a) issue an injunction;

(b) appoint a receiver or custodian pendente lite with all powers and duties the court directs;

(c) take other action required to preserve the company's assets wherever located; and

(d) carry on the business of the company until a full hearing can be held.

Amended by Chapter 364, 2008 General Session

48-2c-1212. Receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a company may, at any time before entering a decree of dissolution, appoint one or more custodians to manage the business and affairs of the company until further order of the court and may, upon or after entering a decree dissolving the company, appoint one or more receivers to wind up and liquidate the business and affairs of the company. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or a custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the company and all of its property wherever located.

(2) The court may appoint any person or the court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may dispose of all or any part of the assets of the company wherever located, at a public or private sale, if authorized by the court; and

(ii) may sue and defend in its own name as receiver of the company in all courts of this state; or

(b) the custodian may exercise all of the powers of the company, through or in place of its members or managers, to the extent necessary to manage the affairs of the company in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the company, its members, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the company or proceeds from the sale of the assets.

Enacted by Chapter 260, 2001 General Session

48-2c-1213. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 48-2c-1210 exist, it may enter a decree dissolving the company and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the division for filing and shall mail a copy of the decree to the registered agent of the company or to the division if it has no registered agent of record.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the company's business and affairs in accordance with Part 13.

(3) The court's order may be appealed as in other civil proceedings.

Enacted by Chapter 260, 2001 General Session

48-2c-1214. Election to purchase in lieu of dissolution.

(1) In a proceeding under Subsection 48-2c-1210(2) to dissolve a company, the company may elect, or if it fails to elect, one of more members may elect to purchase the interest in the company owned by the petitioning member at the fair market value of the interest, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-2c-1210(2) or at any later time as the court in its discretion may allow. If the company files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase the interest in the company owned by the petitioning member, the company shall purchase the interest in the manner provided in this section.

(b) If the company does not file an election with the court within the time period, but an election to purchase the interest in the company owned by the petitioning member is filed by one or more members within the time period, the company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the court of an election by members to purchase the interest in the company owned by the petitioning member as provided in this section, give written notice of the election to purchase to all members of the company, other than the petitioning member. The notice shall state the name and the percentage interest in the company owned by the petitioning member and the name and the percentage interest in the company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the company in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Members who wish to participate in the purchase of the interest in the company of the petitioning member must file notice of their intention to join in the purchase by electing members, no later than 30 days after the effective date of the company's notice of their right to join in the election to purchase.

(d) All members who have filed with the court an election or notice of their intention to participate in the election to purchase the interest in the company of the petitioning member thereby become irrevocably obligated to participate in the purchase of the interest from the petitioning member upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the company or one or more members, the proceedings under Subsection 48-2c-1210(2) may not be discontinued or settled, nor may the petitioning member sell or otherwise dispose of his interest in the company, unless the court determines that it would be equitable to the company and the members, other than the petitioning member, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of the company filing of an election to purchase the interest in the company of the petitioning member or the company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the company of the petitioning member, the petitioning member

and electing company or members reach agreement as to the fair market value and terms of the purchase of the petitioning member's interest, the court shall enter an order directing the purchase of the petitioning member's interest, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party, the court shall stay the proceedings under Subsection 48-2c-1210(2) and determine the fair market value of the petitioning member's interest in the company as of the day before the date on which the petition under Subsection 48-2c-1210(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5) (a) Upon determining the fair market value of the interest in the company of the petitioning member, the court shall enter an order directing the purchase of the interest in the company upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of the interest in the company among members if the interest in the company is to be purchased by members.

(b) In allocating the petitioning member's interest in the company among holders of different classes of members, the court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The court may direct that holders of a specific class or classes shall not participate in the purchase. The court may not require any electing member to purchase more of the interest in the company owned by the petitioning member than the percentage interest that the purchasing member may have set forth in his election or notice of intent to participate filed with the court.

(c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(d) If the court finds that the petitioning member had probable ground for relief under Subsection 48-2c-1210(2)(b) or (2)(d), it may award to the petitioning member reasonable fees and expenses of counsel and experts employed by the petitioning member.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the company under Subsection 48-2c-1210(2) and the petitioning member shall no longer have any rights or status as a member of the company, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days after the date the order becomes final, unless before that time the company files with the court a notice of its intention to adopt articles of dissolution pursuant to Section 48-2c-1204. The articles of dissolution must then be adopted and filed within 60 days after notice.

(b) Upon filing of articles of dissolution, the company is dissolved and shall be

wound up pursuant to Part 13 of this chapter, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning member reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning member may continue to pursue any claims previously asserted on behalf of the company.

(8) Any payment by the company pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Sections 48-2c-1005 and 48-2c-1006.

Enacted by Chapter 260, 2001 General Session

48-2c-1301. Winding up defined.

The winding up of a dissolved company is the process consisting of collecting all amounts owed to the company, selling or otherwise disposing of the company's assets and property, paying or discharging the taxes, debts and liabilities of the company or making provision for the payment or discharge, and distributing all remaining company assets and property among the members of the company according to their interests. There is no fixed time period for completion of winding up a dissolved company except that the winding up should be completed within a reasonable time under the circumstances.

Enacted by Chapter 260, 2001 General Session

48-2c-1302. Powers of company in winding up.

A dissolved company in winding up has all powers of a company that is not dissolved but those powers may be used only for the purpose of winding up and not for the carrying on of any business or activity other than that necessary for winding up. Those powers include, but are not limited to, the power to:

(1) continue the business of the company for the time reasonably necessary to obtain appropriate financial results for the members and creditors of the company;

(2) hire and fire employees, agents, and service providers;

(3) settle or compromise claims or debts owed to the company or claims brought against, or debts owed by, the company;

(4) sell, exchange, or otherwise dispose of property of the company whether for cash or on terms;

(5) convey and transfer property of the company;

(6) sue to collect amounts owed to the company and to recover property or rights belonging to the company;

(7) initiate and defend claims in any proceeding;

(8) settle disputes by mediation, arbitration, or court action; and

(9) perform every other act necessary to wind up and liquidate the business and affairs of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1303. Persons authorized to wind up.

(1) Unless otherwise provided in the operating agreement and except for persons appointed by the court in a judicial dissolution under Sections 48-2c-1211 through 48-2c-1213, the following persons, in the order of priority indicated, shall have the right to wind up the business of a dissolved company:

(a) if the company is manager-managed, first, the existing managers or, second, an agent designated by the existing managers or, third, the existing members, or fourth, an agent designated by the existing members;

(b) if the company is member-managed, first, the existing members or, second, an agent designated by the existing members;

(c) if there are no existing managers or members, first, an agent designated by the last surviving member or, second, an agent designated by the successors in interest of the last surviving member; or

(d) in any situation not covered by Subsection (1)(a), (b), or (c), a person appointed by a court of competent jurisdiction upon application of any interested person.

(2) The person who winds up the business and affairs of a dissolved company in conformity with this part:

(a) shall, unless otherwise directed by a court of competent jurisdiction, become a trustee for the members and creditors of the company and, in that capacity, may sell or distribute any company property discovered after dissolution, convey real estate, and take any other necessary action on behalf of and in the name of the company; and

(b) shall not be personally liable to anyone by reason of that person's actions in winding up the company except for damages resulting from the person's gross negligence or willful misconduct.

Enacted by Chapter 260, 2001 General Session

48-2c-1304. Payment of claims and obligations.

(1) A dissolved company in winding up shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the company and all claims and obligations which are known to the company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority under law and, among claims and obligations of equal priority, ratably to the extent of assets available therefor.

(2) Unless otherwise provided in the articles of organization or operating agreement of the dissolved company, any remaining assets shall be distributed as provided in Section 48-2c-1308.

Enacted by Chapter 260, 2001 General Session

48-2c-1305. Disposition of known claims by notification.

(1) A dissolved company in winding up may dispose of the known claims against it by following the procedures described in this section.

(2) A company in winding up electing to dispose of known claims pursuant to

this section may give written notice of the company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the company;

(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by another statute limiting actions, a claim against the dissolved company is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) The failure of the dissolved company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Enacted by Chapter 260, 2001 General Session

48-2c-1306. Disposition of claims by publication.

(1) A dissolved company in winding up may publish notice of its dissolution and request that persons with claims against the company present them in accordance with the notice.

(2) The notice contemplated in Subsection (1) shall:

(a) (i) be published once a week for three successive weeks in a newspaper of general circulation:

(A) in the county where the dissolved company's principal office is; or

(B) if it has no principal office in this state, Salt Lake County; and

(ii) be published, in accordance with Section 45-1-101, for three successive weeks;

(b) describe the information that must be included in a claim and provide an address to which written notice of any claim must be given to the company;

(c) state the deadline, which may not be fewer than 120 days after the first date of publication of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another statute limiting actions, the claim will be barred if not received by the deadline.

(3) If the dissolved company publishes a newspaper or website notice in

accordance with Subsection (2), then unless sooner barred under Section 48-2c-1305 or under another statute limiting actions, the claim of any claimant against the dissolved company is barred if:

(a) the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) (a) For purposes of this section, "claim" means any claim, including claims of this state whether known or unknown, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section and Section 48-2c-1305, a proceeding to enforce a claim means a civil action or an arbitration under an agreement for binding arbitration between the dissolved company and the claimant.

Amended by Chapter 141, 2009 General Session

48-2c-1307. Enforcement of claims against dissolved company in winding up.

(1) A claim may be enforced:

(a) under Section 48-2c-1305 or 48-2c-1306 against a dissolved company in winding up to the extent of its undistributed assets; or

(b) against one or more members of the dissolved company to the extent the assets have been distributed to the members in winding up.

(2) The total liability for all claims under this section may not exceed the total value of assets distributed to the members during winding up as that value is determined at the time of distribution.

(3) Any member required to return any portion of the value of assets received by that member during winding up shall be entitled to contribution from all other members. The contributions shall be in accordance with the respective rights and interests of the members and may not exceed the value of the assets received in winding up.

Enacted by Chapter 260, 2001 General Session

48-2c-1308. Distribution of assets on winding up.

(1) After dissolution, and during winding up, the assets of the company shall be applied to pay or satisfy:

(a) first, the liabilities to creditors other than members, in the order of priority as provided by law;

(b) second, the liabilities to members in their capacities as creditors, in the order of priority as provided by law; and

(c) third, the expenses and cost of winding up.

(2) Company assets remaining after application under Subsection (1) shall be allocated and distributed to the members as provided in the articles of organization or

operating agreement, or if not so provided, in accordance with the members' final capital account balances after allocation of all profits and losses including profits and losses accrued or incurred during winding up.

Enacted by Chapter 260, 2001 General Session

48-2c-1309. Deposit with state treasurer.

Assets of a dissolved company that should be transferred to a creditor, claimant, or member of the company who cannot be found shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Enacted by Chapter 260, 2001 General Session

48-2c-1401. Conversion of certain entities to a domestic company.

(1) As used in this part, the term "subject entity" means and includes a corporation, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited partnership, a nonprofit corporation, or a foreign company.

(2) Any subject entity may convert to a domestic company by complying with Section 48-2c-1404 and filing with the division:

(a) articles of conversion that satisfy the requirements of Section 48-2c-1402; and

(b) articles of organization that satisfy the requirements of Part 4, Formation.

Amended by Chapter 141, 2009 General Session

48-2c-1402. Articles of conversion.

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic company;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the company as set forth in its articles of organization filed in accordance with Subsection 48-2c-1401(2)(b);

(4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic company if it is not to be effective upon the filing of the articles of conversion and the articles of organization; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Enacted by Chapter 260, 2001 General Session

48-2c-1403. Effect of conversion.

(1) Upon filing with the division of the articles of conversion and the articles of organization or, if applicable, upon the future effective date or time of the articles of conversion and the articles of organization, the subject entity shall be converted into a domestic company and the company shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2c-402, the existence of the company shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic company shall not be considered to affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic company or the personal liability of any person incurred prior to the conversion.

(3) When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity, shall remain vested in the domestic company to which the subject entity has converted and shall be the property of the domestic company, and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic company to which the subject entity has converted and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic company.

(4) A converted subject entity shall, upon conversion to a domestic company pursuant to this part, be considered the same entity as the domestic company and the rights, privileges, powers, and interests in property of the subject entity, as well as the debts, liabilities, and duties of the subject entity, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the domestic company to which the subject entity has converted.

(5) In connection with conversion of a subject entity to a domestic company under this part, all interests in, or securities of or rights in the subject entity which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the domestic company to which it is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

(6) Unless otherwise agreed, or as required under applicable non-Utah law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not be considered to constitute a dissolution of the other entity but shall constitute a continuation of the existence of the converting other entity in the form of a domestic company.

Enacted by Chapter 260, 2001 General Session

48-2c-1404. Approval of conversion.

(1) Any conversion involving a foreign subject entity must be permitted by the laws governing the foreign subject entity.

(2) Any filing required to effect the conversion and the change in domicile of a surviving domestic company under the laws of each jurisdiction governing the foreign subject entity shall be timely made.

(3) Prior to filing articles of conversion with the division:

(a) the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing that governs the internal affairs of the subject entity, as appropriate; and

(b) the new operating agreement, if any, for the domestic company must be approved by the same authorization required to approve the conversion.

(4) If applicable law, or the document, instrument, agreement, or other writing that governs the internal affairs of the subject entity, does not provide for the manner of approving the conversion, unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new operating agreement.

Amended by Chapter 141, 2005 General Session

48-2c-1405. No limitation on other changes.

The provisions of Sections 48-2c-1401 and 48-2c-1404 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any entity to this state by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

Enacted by Chapter 260, 2001 General Session

48-2c-1406. Approval of company conversion to other entity.

(1) (a) A domestic company may convert to any subject entity upon the authorization of the conversion in accordance with this section.

(b) If an operating agreement specifies the manner of authorizing a conversion of a company, the conversion shall be authorized as specified in the operating agreement.

(c) If the operating agreement does not specify the manner of authorizing a conversion of the company and does not prohibit a conversion of the company, the conversion shall be authorized in the same manner as specified in the operating agreement for authorizing a merger that involves the company as a constituent party to the merger.

(d) If the operating agreement does not specify the manner of authorizing a conversion of the company or a merger that involves the company as a constituent party and does not prohibit a conversion of the company, the conversion must be authorized by unanimous consent of all members.

(2) A converted domestic company shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic company, as well as the debts, liabilities, and duties of the domestic company, may not, for any purpose of the laws of this state, be

considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic company has converted.

(3) (a) Unless otherwise agreed, the conversion of a domestic company to another entity, pursuant to this section, does not require the domestic company to wind up its affairs or to pay its liabilities or distribute its assets under this chapter.

(b) In connection with conversion of a domestic company to another entity under this section, all interests in, or securities of or rights in the domestic company which is to be converted may be:

(i) exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic company is converted; or

(ii) in addition to or in lieu of an exchange or conversion described in Subsection (3)(b)(i), may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

(4) A conversion of a domestic company into a foreign subject entity must be:

(a) permitted by the statutes governing the foreign subject entity;

(b) approved in the manner required by the statutes described in Subsection (4)(a); and

(c) accompanied by any filing in the foreign jurisdiction required by the statutes described in Subsection (4)(a).

Amended by Chapter 141, 2005 General Session

48-2c-1407. Merger.

(1) One or more limited liability companies may merge with one or more other entities, pursuant to this section, if each company and entity that is a party to the merger approves a plan of merger and if the merger is permitted by the statutes governing each entity. The entity that survives may be a limited liability company or other entity.

(2) The plan of merger shall set forth:

(a) the name and type of each entity planning to merge;

(b) the name and type of the entity that will survive;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the ownership interests of each owner into ownership interests or obligations of the surviving entity, or any other entity, or into cash or other property in whole or in part; and

(e) if any party to the merger is an entity other than a limited liability company, any additional information required for a merger by the statutes governing that entity.

(3) The plan of merger may set forth:

(a) amendments to the articles of organization of a limited liability company, if that company is the surviving entity; and

(b) other provisions relating to the merger.

Enacted by Chapter 260, 2001 General Session

48-2c-1408. Approval of merger.

(1) A plan of merger shall be approved by each entity that is a party to the

merger, as follows:

(a) In the case of a domestic company, by members holding the interest in profits required by Section 48-2c-803, or by a greater vote if required by its articles of organization or operating agreement.

(b) In the case of an entity other than a domestic company, as provided by the statutes governing that entity.

(2) After a merger is authorized, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights:

(a) By a domestic company, in accordance with the procedure set forth in the plan of merger or, if none is set forth, by vote of members holding 2/3 of the profit interests in the domestic company.

(b) By a party to the merger that is not a domestic company, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner permitted by the statutes governing that entity.

Enacted by Chapter 260, 2001 General Session

48-2c-1409. Articles of merger.

(1) After a plan of merger is approved by each entity that is a party to the merger, the surviving entity shall deliver to the division, for filing, articles of merger setting forth:

(a) the plan of merger; and

(b) a statement that the plan of merger was duly authorized and approved by each entity that is a party to the merger in accordance with Section 48-2c-1408.

(2) The merger takes effect on the date of filing the articles of merger with the division, unless otherwise set forth in the plan of merger or the articles of merger, provided the effective date is later than the date of filing the articles of merger.

Enacted by Chapter 260, 2001 General Session

48-2c-1410. Effect of merger.

(1) When a merger involving a limited liability company takes effect:

(a) every other entity that is a party to the merger merges into the surviving entity, and the separate existence of every other party ceases;

(b) title to all real estate and other property owned by each of the entities that were parties to the merger is vested in the surviving entity without reversion or impairment;

(c) all obligations of each of the entities that were parties to the merger, including, without limitation, contractual, tort, statutory, and administrative obligations, are obligations of the surviving entity;

(d) an action or proceeding pending against each of the entities or its owners that were parties to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding;

(e) if a domestic company is the surviving entity, its articles of organization are amended to the extent provided in the plan of merger;

(f) the ownership interests of each owner that are to be converted into

ownership interests or obligations of the surviving entity or any other entity, or into cash or other property, are converted as provided in the plan of merger;

(g) liability of an owner for obligations of an entity that is a party to the merger shall be determined:

(i) as to liabilities incurred by the entity prior to the merger, according to the laws applicable prior to the merger; and

(ii) as to liabilities incurred by the entity after the merger, according to the laws applicable after the merger, except as provided in Subsection (1)(h);

(h) if prior to the merger an owner of an entity was a partner of a partnership or general partner of a limited partnership and was personally liable for the entity's liabilities, and after the merger is an owner normally protected from personal liability, then the owner shall continue to be personally liable for the entity's liabilities incurred during the 12 months following the merger, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the merger; and

(i) the registration of an assumed business name of an entity under Title 42, Chapter 2, Conducting Business Under Assumed Name, shall not be affected by the merger.

(2) Owners of the entities that are parties to the merger are entitled to:

(a) in the case of members of a domestic company, only the rights described in the articles of merger; and

(b) in the case of owners of entities other than a domestic company, the rights provided in the statutes applicable to the entity prior to the merger, including, without limitation, any rights to dissent, to dissociate, to withdraw, to recover for breach of any duty or obligation owed by the other owners, and to obtain an appraisal or payment for the value of an owner's interest.

Enacted by Chapter 260, 2001 General Session

48-2c-1411. Conversion or merger of a low-profit limited liability company.

A low-profit limited liability company may engage in the following to the same extent as a limited liability company that is not a low-profit limited liability company may do so under this part:

(1) convert to another subject entity;

(2) convert from another subject entity; or

(3) participate in a merger.

Enacted by Chapter 141, 2009 General Session

48-2c-1501. Purpose of Part 15.

This part shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the limited liability company form for the business aspects of their practices while preserving the established professional relationships between the professional person and those receiving the professional services.

Enacted by Chapter 260, 2001 General Session

48-2c-1502. Definitions.

As used in this part:

(1) "Professional services company" means a limited liability company organized under this part to render professional services.

(2) "Professional services" means the personal services rendered by:

(a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(b) an attorney granted the authority to practice law by the:

(i) Supreme Court of Utah; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractics;

(d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws, regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, and any subsequent laws regulating the practice of mental health therapy;

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine; or

(t) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.

(3) "Regulating board" means the board or agency organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a company is organized to render.

Amended by Chapter 289, 2011 General Session

48-2c-1503. Rendering professional services.

(1) A professional services company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render those services.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform services for the company if a license is not otherwise required;

(b) prohibit a licensed individual from rendering professional services in his capacity although he is a member, manager, employee, or agent of a professional services company; or

(c) prohibit an individual licensed in another state from rendering professional services for a professional services company in this state if not prohibited by the regulating board.

(3) A professional services company may not render any professional service other than the professional service authorized by its articles of organization.

Enacted by Chapter 260, 2001 General Session

48-2c-1504. No limits on regulating board.

Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating board to license individuals rendering professional services or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual is a member, manager, or employee of a company and rendering the professional services or engaging in the practice of the profession through the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1505. Name limitations.

(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to satisfying the requirements of Sections 48-2c-106, 48-2c-1602, and 48-2c-1606:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by its articles of organization or by Section 48-2c-1503;

(b) must conform with any rule promulgated by the regulating board having jurisdiction over a professional service described in the company's articles of organization; and

(c) must contain, in its articles of organization and in all reports and documents filed with the division, the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in lieu of the requirements of Subsection 48-2c-106(1)(a).

(2) Notwithstanding the provisions of Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" so long as that name meets the requirements of Subsection 48-2c-106(1)(a).

(3) Sections 48-2c-106, 48-2c-1607, and 48-2c-1608 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of an individual member or individual former member of the professional services company or the name of an individual who was associated with a predecessor of the professional services company.

Enacted by Chapter 260, 2001 General Session

48-2c-1506. Activity limitations.

No professional services company may do anything that is prohibited to be done by individuals licensed to practice the profession that the company is organized to render.

Enacted by Chapter 260, 2001 General Session

48-2c-1507. Limit of one profession.

A company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them; provided, however, that a professional services company may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments.

Enacted by Chapter 260, 2001 General Session

48-2c-1508. Members and managers restricted to professionals.

A company organized to render professional services:

(1) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(2) may include members who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services;

(3) may render professional services in this state only through its members, managers, and employees who are licensed or registered by this state to render those professional services; and

(4) shall have all of the other powers provided under Section 48-2c-110.

Enacted by Chapter 260, 2001 General Session

48-2c-1509. Additional requirements for articles of organization.

The articles of organization of a professional services company shall satisfy the requirements of Section 48-2c-403 and, in addition thereto, shall contain the following:

(1) a name consistent with Section 48-2c-1505;

(2) a description of the profession to be practiced through the company; and

(3) notwithstanding Subsection 48-2c-403(2), the names and street addresses of all members and managers of the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1510. Restrictions on transfers by members.

(1) Except as provided in Subsection (2), a member of a professional services company may sell or transfer the member's interest in the company only to the company or to an individual who is licensed or registered by this state to render the same type of professional services as those for which the company was organized.

(2) Upon the death or incapacity of a member of a professional services company, the member's interest in the company may be transferred to the personal representative or estate of the deceased or incapacitated member who may continue to hold that interest for a reasonable period but shall not be authorized to participate in any decision concerning the rendering of professional services.

Enacted by Chapter 260, 2001 General Session

48-2c-1511. Purchase of interest upon death, incapacity, or disqualification of members.

The articles of organization may provide for the purchase of any member's interest in a professional services company subject to this part upon the death, incapacity, or disqualification of that member, or the same may be provided in the operating agreement or by other private agreement. In the absence of such a provision in the articles of organization, the operating agreement, or other private agreement, the professional services company shall purchase the interest of a deceased member or an incapacitated member or a member no longer qualified to own an interest in that

professional services company within 90 days after the company is notified of the death, incapacity, or disqualification, as the case may be. The price for the interest shall be its reasonable fair market value as of the date of death, incapacity, or disqualification. If the professional services company fails to purchase said interest by the end of said 90 days, then the personal representative of a deceased member or the guardian or conservator of an incapacitated member or the disqualified member may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located for the enforcement of this provision. The court shall have power to award the plaintiff the reasonable fair market value of the interest, or within its jurisdiction, may order the liquidation of the professional services company. Further, if the plaintiff is successful in the action, the plaintiff shall be entitled to recover reasonable attorney fees and costs.

Amended by Chapter 364, 2008 General Session

48-2c-1512. Conversion to nonprofessional company.

Whenever all members of a professional services company subject to this part cease at any one time and for any reason to be licensed for the professional services for which the company was organized, or by vote of members holding at least 2/3 interest in the profits of the company, the company shall thereupon be treated as converted into, and shall operate thereafter solely as, a company subject to this chapter but not subject to this part, but may be reconverted to a professional services company upon removal of the disability or by the vote of members holding at least 2/3 interests in the profits of the company. Upon any such conversion or reconversion, a certificate of amendment to the articles of organization shall be filed with the division within a reasonable time thereafter to reflect the changes.

Enacted by Chapter 260, 2001 General Session

48-2c-1513. Application of Part 15.

Where a conflict arises between the provisions of this part and the other provisions of this chapter, the provisions of this part shall control.

Enacted by Chapter 260, 2001 General Session

48-2c-1601. Law governing foreign companies.

(1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign company. The laws of the state or other jurisdiction under which a foreign company is organized govern its organization and internal affairs and the liability of its managers, members, and assignees of members.

(2) A foreign company may not be denied authority to transact business in this state by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

Enacted by Chapter 260, 2001 General Session

48-2c-1602. Authority to transact business required.

(1) A foreign company may not transact business in this state until its application for authority to transact business is filed with the division. This applies to foreign companies that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.

(2) The following is a nonexhaustive list of activities that do not constitute "transacting business" within the meaning of Subsection (1):

(a) maintaining, defending, or settling in its own behalf any proceeding;

(b) holding meetings of the managers or members or otherwise carrying on activities concerning internal company affairs;

(c) maintaining bank accounts;

(d) selling through independent contractors;

(e) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(f) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;

(g) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing those debts;

(h) owning, without more, real or personal property;

(i) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

(j) transacting business in interstate commerce;

(k) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in the security, or any combination of such transactions; and

(l) any other activities not considered to constitute transacting business in this state as determined in the discretion of the director of the division.

(3) Nothing in this section limits or affects the right to subject a foreign company which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign company any process, notice, or demand required or permitted by law to be served upon a company pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

Enacted by Chapter 260, 2001 General Session

48-2c-1603. Consequences of transacting business without authority.

(1) A foreign company transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.

(2) The successor to a foreign company that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign company or its successor.

(3) A court may stay a proceeding commenced by a foreign company, its successor, or assignee until it determines whether the foreign company, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed with the division.

(4) A foreign company that transacts business in this state without authority is subject to a civil penalty, payable to this state, of $100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of $5,000 for each year. Each manager or member of a foreign company who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign company who transacts business in this state on behalf of a foreign company that is not authorized is subject to a civil penalty, payable to this state, not exceeding $1,000 for each year.

(5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in the district court for Salt Lake County or in any other county in this state in which the foreign company has an office or in which it has transacted business. Upon a finding by the court that a foreign company or any of its managers, members, or agents has transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign company and the further exercise of any rights and privileges in this state. Upon issuance of the injunction, the foreign company shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign company has otherwise complied with the provisions of this part.

(6) Notwithstanding Subsections (1) and (2), the failure of a foreign company to have authority to transact business in this state does not impair the validity of its acts, nor does the failure prevent the foreign company from defending any proceeding in this state.

Amended by Chapter 364, 2008 General Session

48-2c-1604. Application for authority to transact business.

(1) A foreign company may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:

(a) its name and its assumed name, if any;

(b) the name of the state or country under whose law it is formed or organized;

(c) the nature of the business or purposes to be conducted or promoted in this state;

(d) its date of formation or organization and period of its duration;

(e) the street address of its principal office;

(f) the information required by Subsection 16-17-203(1);

(g) (i) the names and street addresses of its current managers, if it is a manager-managed company; or

(ii) the names and street addresses of its members, if it is a member-managed company;

(h) the date it commenced or expects to commence transacting business in this state; and

(i) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.

(2) The foreign company shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the lieutenant governor or other official having custody of records in the state or country under whose law it is formed or organized. The certificate of existence shall be dated within 90 days prior to the filing of the application for authority to transact business by the division.

(3) The foreign company shall include in the application for authority to transact business, or in an accompanying document, the written consent to appointment by the designated registered agent in this state.

(4) (a) The division may permit a tribal limited liability company to apply for authority to transact business in the state in the same manner as a foreign company formed in another state.

(b) If a tribal limited liability company elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability company shall be treated in the same manner as a foreign company formed under the laws of another state.

Amended by Chapter 249, 2008 General Session
Amended by Chapter 364, 2008 General Session

48-2c-1605. Amended application for authority to transact business.

(1) A foreign company authorized to transact business in this state shall deliver an amended application for authority to transact business to the division for filing if the foreign company changes:

(a) its name or its assumed name;

(b) the period of its duration; or

(c) the state or country of its formation or organization.

(2) The requirements of Section 48-2c-1604 for obtaining an original application for authority to transact business apply to filing an amended application for authority to transact business under this section.

Enacted by Chapter 260, 2001 General Session

48-2c-1606. Effect of filing an application for authority to transact business.

(1) Filing an application for authority to transact business authorizes the foreign

company to transact business in this state subject, however, to the right of this state to revoke the certificate as provided in this part.

(2) A foreign company authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic company of like character. Except as otherwise provided by this chapter, a foreign company authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic company of like character.

Enacted by Chapter 260, 2001 General Session

48-2c-1607. Company name and assumed company name of foreign company.

(1) Except as provided in Subsection (2), if the name of a foreign company does not satisfy the requirements of Section 48-2c-106 which applies to domestic companies, the foreign company in order to obtain authority to transact business in this state, must assume for use in this state a name that satisfies the requirements of Section 48-2c-106.

(2) A foreign company may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 48-2c-106(2), if the foreign company delivers to the division for filing either:

(a) a written consent to the foreign company's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign company to use the requested name in this state.

(3) A foreign company may use in this state the name, including the assumed name, of another domestic or foreign company or other entity that is used or registered in this state if the other company is formed or organized or authorized to transact business in this state and the foreign company:

(a) has merged with the other company; or

(b) has been formed by conversion of the other entity.

(4) If a foreign company authorized to transact business in this state, whether under its name or an assumed name, changes its name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 48-2c-106, it may not transact business in this state under the changed name but must use an assumed name that does meet the requirements of this section and must deliver to the division for filing an amended application for authority to transact business pursuant to Section 48-2c-1605.

Enacted by Chapter 260, 2001 General Session

48-2c-1608. Registered name of foreign company.

(1) A foreign company may register its name as provided in this section if the

name would be available for use as a name for a domestic company under Section 48-2c-106. If the foreign company's name would not be available for such use, then the foreign company may register its name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 48-2c-106: "limited liability company", "limited company", "L.L.C.", "L.C.", "LLC", or "LC".

(2) A foreign company registers its name, or its name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:

(a) setting forth its name, the name to be registered which must meet the requirements of Section 48-2c-106 that apply to domestic companies, the state or country and date of formation or organization, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of formation or organization as evidence that the foreign company is in existence or has authority to transact business under the laws of the state or country in which it is formed or organized.

(3) The name is registered for the applicant upon the effective date of the application, and the initial registration is effective until the end of the calendar year in which it became effective.

(4) A foreign company that has in effect a registration of its name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2) between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.

(5) A foreign company that has in effect registration of its name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign company by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application must meet the requirements of this part.

(6) (a) A foreign company that has in effect registration of its name may terminate the registration at any time by delivering to the division for filing a statement of termination setting forth the name and stating that the registration is terminated.

(b) A registration of name automatically terminates upon the filing of an application for authority to transact business in this state under the registered name.

(7) The registration of a name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to transact business in this state under the registered name, but the authorization is subject to the limitations applicable to company names as set forth in Section 48-2c-106.

Enacted by Chapter 260, 2001 General Session

48-2c-1609. Amendment of articles of organization of foreign company.

Whenever the articles of organization of a foreign company authorized to transact business in this state are amended, it shall not be necessary for the foreign company to file a copy of the amendments with the division; but amending the articles of organization shall not of itself enlarge or alter the purpose or purposes which the foreign company is authorized to pursue in transacting its business in this state, nor authorize the foreign company to transact business in this state under any other name than the name set forth in its application for authority filed with the division.

Enacted by Chapter 260, 2001 General Session

48-2c-1610. Merger of foreign company authorized to transact business in this state.

Whenever a foreign company authorized to transact business in this state shall be a party to a merger permitted by the laws of the state or jurisdiction under the laws of which it is organized, and such company shall be the surviving company, it shall, within 30 days after the merger becomes effective, file with the division a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which the merger was effected; and it shall not be necessary for the foreign company to procure either new or amended authority to transact business in this state unless the name of the company be changed thereby or unless the foreign company desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

Enacted by Chapter 260, 2001 General Session

48-2c-1611. Withdrawal of foreign company.

(1) A foreign company authorized to transact business in this state may not withdraw from this state until its application for withdrawal has been filed with the division.

(2) A foreign company authorized to transact business in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:

(a) its company name and its assumed name, if any;

(b) the name of the state or country under whose law it is formed or organized;

(c) the address of its principal office, or if none is to be maintained, a statement that the foreign company will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-17-301;

(d) that the foreign company is not transacting business in this state and that it surrenders its authority to transact business in this state;

(e) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and

(f) any additional information that the division determines is necessary or appropriate to determine whether the foreign company is entitled to withdraw, and to

determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.

(3) A foreign company's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations of the foreign company have been paid and the division has received a tax clearance certificate from the State Tax Commission.

Amended by Chapter 364, 2008 General Session

48-2c-1612. Grounds for revocation.

The division may commence a proceeding under Section 48-2c-1613 to revoke the authority of a foreign company to transact business in this state if:

(1) the foreign company does not deliver its annual report to the division when it is due;

(2) the foreign company does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(3) the foreign company is without a registered agent in this state;

(4) the foreign company does not inform the division under Title 16, Chapter 17, Model Registered Agents Act, that its registered agent has changed or that its registered agent has resigned;

(5) an organizer, member, manager, or agent of the foreign company signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or

(6) the division receives a duly authenticated certificate from the lieutenant governor or other official having custody of limited liability company records in the state or country under whose law the foreign company is formed or organized stating that the foreign company has dissolved or disappeared as the result of a merger.

Amended by Chapter 364, 2008 General Session

48-2c-1613. Procedure for and effect of revocation.

(1) If the division determines that one or more grounds exist under Section 48-2c-1612 for revoking the authority of a foreign company to transact business in this state, the division shall mail to the foreign company written notice of:

(a) the division's determination that one or more grounds exist for revocation; and

(b) the grounds for revocation.

(2) (a) If the foreign company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign company's authority to transact business in this state.

(b) If a foreign company's authority to transact business in this state is revoked under Subsection (2)(a), the division shall mail to the foreign company written notice of:

(i) revocation; and

(ii) the effective date of the revocation.

(c) The division shall mail a copy of the notice to:

(i) the last registered agent of the foreign company; or

(ii) if there is no registered agent of record, at least one member or manager of the foreign company.

(3) The authority of a foreign company to transact business in this state ceases on the date shown on the division's certificate revoking the company's certificate of authority.

(4) Revocation of a foreign company's authority to transact business in this state does not terminate the authority of the registered agent of the foreign company.

(5) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the foreign company, if the notice is required to be mailed to the registered agent; or

(ii) the member or manager of the foreign company that is mailed the notice, if the notice is required to be mailed to a member or manager of the foreign company.

Amended by Chapter 141, 2009 General Session

48-2c-1614. Appeal from revocation.

(1) A foreign company may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last principal office of the company was located, if any, or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 48-2c-1613. The foreign company appeals by petitioning the court to set aside the revocation and attaching to the petition a copy of the company's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.

(2) The court may summarily order the division to reinstate the authority of the foreign company to transact business in this state or it may take any other action it considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Amended by Chapter 364, 2008 General Session

48-2c-1615. Actions to restrain transaction of business in state.

The division may order any foreign company, or any agent of a foreign company, to cease doing any business in this state if the foreign company has failed to register under this chapter.

Enacted by Chapter 260, 2001 General Session

48-2c-1701. Right of action.

A member may bring an action in the right of a company to recover a judgment in its favor:

(1) if the managers or, if no managers, the members with authority to do so have refused to bring the action and the decision of the managers or members not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unbiased exercise of judgment; or

(2) if an effort to cause those managers or members to bring the action is not likely to succeed.

Enacted by Chapter 260, 2001 General Session

48-2c-1702. Proper plaintiff.

In an action under Section 48-2c-1701, the plaintiff must be a member at the time of bringing the action and:

(1) must have been a member at the time of the transaction of which the member complains; or

(2) the member's status as a member must have devolved upon him by transfer or by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

Enacted by Chapter 260, 2001 General Session

48-2c-1703. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure the initiation of the action by the managers or members or the reasons for not making the effort.

Enacted by Chapter 260, 2001 General Session

48-2c-1704. Stay of proceedings.

Whether or not a demand for action was made, if the company promptly commences an investigation of the allegations made in the demand or complaint, the court may stay the action for such reasonable period as the court considers appropriate but, in any event, the stay shall expire at the earlier of 30 days or when the company's investigation is completed.

Enacted by Chapter 260, 2001 General Session

48-2c-1705. Expenses.

If an action under Section 48-2c-1701 is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of any such action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the company the remainder of the proceeds. If those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or a portion of the expenses be paid by the company.

Enacted by Chapter 260, 2001 General Session

48-2c-1706. Security and costs.

(1) In any action instituted in the right of any company or foreign company, unless the fair market value of the plaintiff's interest in the company as a member exceeds the greater of $25,000 or 5% of the fair market value of the company, the company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the company may become legally liable, but not including attorney's fees.

(2) Fair market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervener as of the date that he becomes a party to the action.

(3) The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased by the court, upon showing that the security provided has or may become inadequate or is excessive.

(4) The company shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of the action if the court finds the action was brought without reasonable cause.

Enacted by Chapter 260, 2001 General Session

48-2c-1801. Definitions.

As used in this part:

(1) "Company" includes any domestic company and any domestic or foreign entity that is a predecessor of a company by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Manager" means an individual who is or was a manager of a company or an individual who, while a manager of a company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A manager is considered to be serving an employee benefit plan at the company's request if his duties to the company also impose duties on, or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. "Manager" includes, unless the context requires otherwise, the estate or personal representative of a manager.

(3) "Expenses" include attorney's fees.

(4) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(5) "Member," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee,

fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A member, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the company's request if that person's duties to the company also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan. Unless the context requires otherwise, the terms include the estates or personal representatives of such persons.

(6) (a) "Official capacity" means:

(i) when used with respect to a manager, the office of manager in a manager-managed company;

(ii) when used with respect to a member, the position of member in a member-managed company; and

(iii) when used with respect to a person other than a manager under Subsection (6)(a)(i) or a member under Subsection (6)(a)(ii), as contemplated in Section 48-2c-1807, the office in a company held by the person, or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the company.

(b) "Official capacity" does not include service for any other foreign or domestic limited liability company, other person, or employee benefit plan.

(7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Enacted by Chapter 260, 2001 General Session

48-2c-1802. Authority to indemnify.

(1) Except as provided in Subsection (4), a company may indemnify an individual made a party to a proceeding because he is or was a manager, against liability incurred in the proceeding if:

(a) his conduct was in good faith;

(b) he reasonably believed that his conduct was in, or not opposed to, the company's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A manager's conduct with respect to any employee benefit plan for a purpose he reasonably believed to be in, or not opposed to, the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the manager did not meet the standard of conduct described in this section.

(4) A company may not indemnify a manager under this section:

(a) in connection with a proceeding by or in the right of the company in which the manager was adjudged liable to the company; or

(b) in connection with any other proceeding charging that the manager derived an improper personal benefit, whether or not involving action in his official capacity, in

which proceeding he was adjudged liable on the basis that he derived an improper personal benefit.

Enacted by Chapter 260, 2001 General Session

48-2c-1803. Mandatory indemnification of managers.

Unless limited by its articles of organization, a company shall indemnify a manager who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue, or matter in the proceeding, to which he was a party because he is or was a manager of the company, against reasonable expenses, including attorney's fees, incurred by him in connection with the proceeding or claim with respect to which he has been successful.

Enacted by Chapter 260, 2001 General Session

48-2c-1804. Advancement of expenses.

(1) A company may pay for or reimburse the reasonable expenses incurred by a manager who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the manager furnishes the company a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 48-2c-1802;

(b) the manager furnishes to the company a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b) must be an unlimited general obligation of the manager but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 48-2c-1806.

Enacted by Chapter 260, 2001 General Session

48-2c-1805. Court-ordered indemnification.

Unless a company's articles of organization provide otherwise, a manager of the company who is or was a party to a proceeding may apply for indemnification to the court or other decision-maker conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(1) if the court determines that the manager is entitled to mandatory indemnification under Section 48-2c-1803, the court shall order indemnification, in which case the court shall also order the company to pay the manager's reasonable expenses, including attorney's fees, incurred to obtain court-ordered indemnification; and

(2) if the court determines that the manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the manager met the applicable standard of conduct set forth in Section 48-2c-1802 or was adjudged liable as described in Subsection 48-2c-1802(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 48-2c-1802(4) is limited to reasonable expenses incurred.

Enacted by Chapter 260, 2001 General Session

48-2c-1806. Determination and authorization of indemnification.

(1) A company may not indemnify a manager under Section 48-2c-1802 unless authorized and a determination has been made in the specific case that indemnification of the manager is permissible in the circumstances because the manager has met the applicable standard of conduct set forth in Section 48-2c-1802. A company may not advance expenses to a manager under Section 48-2c-1804 unless authorized in the specific case after the written affirmation and undertaking required by Subsections 48-2c-1804(1)(a) and (b) are received and the determination required by Subsection 48-2c-1804(1)(c) has been made.

(2) The determinations required by Subsection (1) shall be made:

(a) by the managers by a majority vote and only those managers not parties to the proceeding shall be counted;

(b) by special legal counsel selected by a majority vote of the managers of the company who are not parties to the proceeding or, if none, by members holding a majority interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding; or

(c) by the members holding more than 50% interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding.

(3) Unless authorization is required by the operating agreement, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by those entitled under Subsection (2)(b) to select legal counsel.

Enacted by Chapter 260, 2001 General Session

48-2c-1807. Indemnification of members, employees, fiduciaries, and agents.

Unless a company's articles of organization provide otherwise:

(1) a member of a company is entitled to mandatory indemnification under Section 48-2c-1803 and is entitled to apply for court-ordered indemnification under Section 48-2c-1805 in each case to the same extent as a manager;

(2) the company may indemnify and advance expenses to a member, employee, fiduciary, or agent of the company to the same extent as to a manager; and

(3) a company may also indemnify and advance expenses to a member, employee, fiduciary, or agent who is not a manager to a greater extent, if not inconsistent with public policy, and if provided for by its articles of organization, operating agreement, general or specific action of its managers or members, or contract.

Enacted by Chapter 260, 2001 General Session

48-2c-1808. Insurance.

A company may purchase and maintain liability insurance on behalf of a person who is or was a manager, member, employee, fiduciary, or agent of the company, or who, while serving as a manager, member, employee, fiduciary, or agent of the company, is or was serving at the request of the company as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic limited liability company or other person, or of an employee benefit plan, against liability asserted against or incurred by him in that capacity or arising from his status as a manager, member, employee, fiduciary, or agent, whether or not the company would have power to indemnify him against the same liability under Sections 48-2c-1802, 48-2c-1803, and 48-2c-1807. Insurance may be procured from any insurance company designated by the company, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the company has an equity or any other interest through stock ownership or otherwise.

Enacted by Chapter 260, 2001 General Session

48-2c-1809. Limitations on indemnification.

(1) A provision treating a company's indemnification of, or advance for expenses to, managers or members that is contained in its articles of organization or operating agreement or in a resolution of its members or in a contract, except an insurance policy, or otherwise, is valid only if and to the extent the provision is not inconsistent with this part. If the articles of organization limit indemnification or advancement of expenses, indemnification and advancement of expenses are valid only to the extent not inconsistent with the articles of organization.

(2) This part does not limit a company's power to pay or reimburse expenses incurred by a manager or member in connection with the manager's or member's appearance as a witness in a proceeding at a time when the manager or member has not been made a named defendant or respondent in the proceeding.

Enacted by Chapter 260, 2001 General Session

48-2c-1901. Legislative intent -- Freedom of contract.

It is the intent of the Legislature that this chapter be interpreted so as to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of companies.

Enacted by Chapter 260, 2001 General Session

48-2c-1902. Transitional provisions.

(1) Each limited liability company formed prior to July 1, 2001, under the laws of this state, and existing on July 1, 2001:

(a) shall continue in existence with all rights and privileges applicable to limited liability companies formed under this chapter;

(b) need not amend its articles of organization to include the address of its designated office if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports; and

(c) that provides professional services as defined in Part 15 of this chapter, need not amend its articles of organization to comply with Section 48-2c-1509 if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports.

(2) All domestic companies formed prior to July 1, 2001, under the laws this state, as well as their managers, members, and assignees of members, as applicable, shall have all the rights and privileges and shall be subject to all the requirements, restrictions, duties, liabilities, and remedies prescribed in this chapter.

(3) Each foreign limited liability company authorized to transact business in this state as of July 1, 2001, is subject to the provisions of this chapter, but is not required by reason of enactment of this chapter to obtain a new certificate of authority to transact business in this state.

Enacted by Chapter 260, 2001 General Session

48-2e-101. Title.

This chapter is known as the "Utah Uniform Limited Partnership Act."

Enacted by Chapter 412, 2013 General Session

48-2e-102. Definitions.

As used in this chapter:

(1) "Certificate of limited partnership" means the certificate required by Section 48-2e-201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-2e-501 which is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited partnership to a person on account of a transferable interest or in the person's capacity as a partner. The term:

(a) includes:

(i) a redemption or other purchase by a limited partnership of a transferable

interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the limited partnership's activities and affairs or to have access to records or other information concerning the limited partnership's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign limited partnership under a provision similar to Subsection 48-2e-404(3).

(7) "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited partnership if formed under the law of this state. The term includes a foreign limited liability limited partnership.

(8) "General partner" means a person that:

(a) has become a general partner under Section 48-2e-401 or was a general partner in a limited partnership when the limited partnership became subject to this chapter under Section 48-2e-1205; and

(b) has not dissociated as a general partner under Section 48-2e-603.

(9) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(10) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(11) "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the partnership is a limited liability limited partnership.

(12) "Limited partner" means a person that:

(a) has become a limited partner under Section 48-2e-301 or was a limited partner in a limited partnership when the limited partnership became subject to this chapter under Section 48-2e-1205; and

(b) has not dissociated under Section 48-2e-601.

(13) "Limited partnership" means an entity formed under this chapter or which becomes subject to this chapter under Part 11, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-2e-1205. The term includes a limited liability limited partnership.

(14) "Partner" means a limited partner or general partner.

(15) "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement, and whether oral, implied, in a record, or in any combination thereof, of all the partners of a limited partnership concerning the matters described in Subsection 48-2e-112(1). The term includes the agreement as amended or restated.

(16) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) "Principal office" means the principal executive office of a limited partnership or foreign limited partnership, whether or not the office is located in this state.

(18) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(19) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) "Registered agent" means an agent of a limited partnership or foreign limited partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the limited partnership.

(21) "Registered foreign limited partnership" means a foreign limited partnership that is registered to do business in this state pursuant to a statement of registration filed by the division.

(22) "Required information" means the information that a limited partnership is required to maintain under Section 48-2e-115.

(23) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(24) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(25) "Transfer" includes:

(a) an assignment;

(b) a conveyance;

(c) a sale;

(d) a lease;

(e) an encumbrance, including a mortgage or security interest;

(f) a gift; and

(g) a transfer by operation of law.

(26) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a limited partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(27) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under Subsection 48-2e-602(1)(c) or 48-2e-605(1)(d).

(28) "Tribal limited partnership" means a limited partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe under whose law the limited partnership is formed.

(29) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Enacted by Chapter 412, 2013 General Session

48-2e-103. Knowledge -- Notice.

(1) A person knows a fact if the person:

(a) has actual knowledge of it; or

(b) is deemed to know it under law other than this chapter.

(2) A person has notice of a fact if the person:

(a) has reason to know the fact from all of the facts known to the person at the time in question; or

(b) is deemed to have notice of the fact under Subsection (3) or (4).

(3) A certificate of limited partnership on file in the office of the division is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in Subsection (4), the certificate is not notice of any other fact.

(4) A person not a partner is deemed to have notice of:

(a) another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) a limited partnership's:

(i) dissolution 90 days after an amendment to the certificate of limited partnership stating that the limited partnership becomes effective;

(ii) termination 90 days after a statement of termination under Subsection 48-2e-802(2)(b)(vi) becomes effective;

(iii) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and

(iv) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.

(5) Subject to Subsection 48-2e-209(6), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(6) A general partner's knowledge or notice of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the limited partnership,

except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge or notice of a fact relating to the limited partnership is not effective as knowledge of or notice to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-104. Nature, purpose, and duration of limited partnership.

(1) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may have any lawful purpose, regardless of whether for profit.

(3) A limited partnership has perpetual duration.

Enacted by Chapter 412, 2013 General Session

48-2e-105. Powers.

A limited partnership has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

Enacted by Chapter 412, 2013 General Session

48-2e-106. Governing law.

The law of this state governs:

(1) the internal affairs of a limited partnership; and

(2) the liability of a partner as partner for the debts, obligations, or other liabilities of a limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-107. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

Enacted by Chapter 412, 2013 General Session

48-2e-108. Permitted names.

(1) The name of a limited partnership may contain the name of any partner.

(2) The name of a limited partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "L.P."or "LP" and may not contain the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP".

(3) The name of a limited liability limited partnership must contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "L.P."or "LP".

(4) Except as otherwise provided in Subsection (7), the name of a limited partnership, and the name under which a foreign limited partnership may register to do business in this state, must be distinguishable on the records of the division from:

(a) the name of an existing person whose formation required the filing of a record by the division;

(b) the name of a limited liability partnership;

(c) the name of a person that is registered to do business in this state by the filing of a record by the division;

(d) each name reserved under Section 48-2e-109 or other law of this state providing for the reservation of a name by the filing of a record by the division;

(e) each name registered under Section 48-2e-110 or other law of this state providing for the registration of a name by the filing of a record by the division; or

(f) an assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(5) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (4), the name of the consenting person may be used by the person to which the consent was given.

(6) Except as otherwise provided in Subsection (7), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.

(7) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (6). In such a case, the person need not change its name pursuant to Subsection (5).

(8) The division may not approve for filing a name that implies that a limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(9) The authorization to file a certificate under or to reserve or register a limited partnership name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(c) create an exclusive right in geographic or generic terms contained within a name.

(10) The name of a limited partnership or foreign limited partnership may not

contain:

(a) the words:

(i) "association";

(ii) "corporation";

(iii) "incorporated";

(iv) "limited liability company"; or

(v) "limited company";

(b) any word or abbreviation that is of like import to the words listed in Subsection (10)(a);

(c) without the written consent of the United States Olympic Committee, the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution".

Enacted by Chapter 412, 2013 General Session

48-2e-109. Reservation of name.

(1) A person may reserve the exclusive use of a name that complies with Section 48-2e-108 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.

(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer which states the name and address of the transferee.

Enacted by Chapter 412, 2013 General Session

48-2e-110. Registration of name.

(1) A foreign limited partnership not registered to do business in this state under Part 9, Foreign Limited Partnerships, may register its name, or an alternate name adopted pursuant to Section 48-2e-906, if the name is distinguishable on the records of the division from the names that are not available under Section 48-2e-108.

(2) To register its name or an alternate name adopted pursuant to Section 48-2e-906, a foreign limited partnership must deliver to the division for filing an application stating the foreign limited partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-2e-906. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective for one year after

the date of registration.

(4) A foreign limited partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(5) A foreign limited partnership whose name registration is effective may register as a foreign limited partnership under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

Enacted by Chapter 412, 2013 General Session

48-2e-111. Registered agent.

(1) Each limited partnership and each registered foreign limited partnership shall designate in accordance with Section 16-17-203(1) and maintain a registered agent in this state.

(2) A limited partnership or registered foreign limited partnership may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-2e-112. Partnership agreement -- Scope, function, and limitations.

(1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:

(a) relations among the partners as partners and between the partners and the limited partnership;

(b) the activities and affairs of the limited partnership and the conduct of those activities and affairs; and

(c) the means and conditions for amending the partnership agreement.

(2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.

(3) A partnership agreement may not:

(a) vary a limited partnership's capacity under Section 48-2e-105 to sue and be sued in its own name;

(b) vary the law applicable under Section 48-2e-106;

(c) vary any requirement, procedure, or other provision of this chapter pertaining to:

(i) registered agents; or

(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;

(d) vary the provisions of Section 48-2e-204;

(e) vary the right of a general partner under Subsection 48-2e-406(2)(b) to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;

(f) eliminate the duty of loyalty or the duty of care except as otherwise provided

in Subsection (4);

(g) eliminate the contractual obligation of good faith and fair dealing under Subsections 48-2e-305(1) and 48-2e-409(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;

(h) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(i) vary the information required under Section 48-2e-115 or unreasonably restrict the duties and rights under Section 48-2e-304 or 48-2e-407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(j) vary the power of a person to dissociate as a general partner under Subsection 48-2e-604(1) except to require that the notice under Subsection 48-2e-603(1) be in a record;

(k) vary the causes of dissolution specified in Subsection 48-2e-801(1)(f);

(l) vary the requirement to wind up the limited partnership's activities and affairs as specified in Subsections 48-2e-802(1), (2)(a), and (4);

(m) unreasonably restrict the right of a partner to maintain an action under Part 10, Actions by Partners;

(n) vary the provisions of Section 48-2e-1005, but the partnership agreement may provide that the limited partnership may not have a special litigation committee;

(o) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-2e-1123(1)(b), 48-2e-1133(1)(b), 48-2e-1143(1)(b), or 48-2e-1153(1)(b); or

(p) except as otherwise provided in Section 48-2e-113 and Subsection 48-2e-114(2), restrict the rights under this chapter of a person other than a partner.

(4) Subject to Subsection (3)(h), without limiting other terms that may be included in a partnership agreement, the following rules apply:

(a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(b) If not unconscionable or against public policy, the partnership agreement may:

(i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-2e-409(2);

(ii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and

(iv) alter or eliminate any other fiduciary duty.

(5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(g) or (4)(b). The court:

(a) shall make its determination as of the time the challenged term became part

of the partnership agreement and by considering only circumstances existing at that time; and

(b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(i) the objective of the term is unconscionable or against public policy; or

(ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session

48-2e-113. Partnership agreement -- Effect on limited partnership and person becoming partner -- Preformation agreement.

(1) A limited partnership is bound by and may enforce the partnership agreement, whether or not the limited partnership has itself manifested assent to the partnership agreement.

(2) A person that becomes a partner of a limited partnership is deemed to assent to the partnership agreement.

(3) Two or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the limited partnership the agreement will become the limited partnership agreement.

Enacted by Chapter 412, 2013 General Session

48-2e-114. Partnership agreement -- Effect on third parties and relationship to records effective on behalf of limited partnership.

(1) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the partnership agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under Subsection 48-2e-703(2)(b) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(a) is effective with regard to any debt, obligation, or other liability of the limited partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(b) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.

(3) If a record delivered by a limited partnership to the division for filing becomes effective and contains a provision that would be ineffective under Subsection 48-2e-112(3) or (4)(b) if contained in the partnership agreement, the provision is ineffective in the record.

(4) Subject to Subsection (3), if a record delivered by a limited partnership to the division for filing becomes effective and conflicts with a provision of the partnership agreement:

(a) the partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Enacted by Chapter 412, 2013 General Session

48-2e-115. Required information.

A limited partnership shall maintain at its principal office the following information:

(1) a current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed statement of merger, interest exchange, conversion, or domestication;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the three most recent years;

(7) a copy of the three most recent annual reports delivered by the limited partnership to the division pursuant to Section 48-2e-212;

(8) a copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) unless contained in a partnership agreement made in a record, a record stating:

(a) a description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

(b) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) any events upon the happening of which the limited partnership is to be dissolved and its activities and affairs wound up.

Enacted by Chapter 412, 2013 General Session

48-2e-116. Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities.

When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

Enacted by Chapter 412, 2013 General Session

48-2e-117. Delivery of record.

(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.

(2) Delivery to the division is effective only when a record is received by the division.

Enacted by Chapter 412, 2013 General Session

48-2e-118. Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited partnerships subject to this chapter are governed by the amendment or repeal.

Enacted by Chapter 412, 2013 General Session

48-2e-201. Formation of limited partnership -- Certificate of limited partnership.

(1) To form a limited partnership, a person must deliver a certificate of limited partnership to the division for filing.

(2) The certificate of limited partnership must state:

(a) the name of the limited partnership, which must comply with Section 48-2e-108;

(b) the street and mailing address of the limited partnership's principal office;

(c) the information required by Subsection 16-17-203(1);

(d) the name and the street and mailing addresses of each general partner; and

(e) whether the limited partnership is a limited liability limited partnership.

(3) A certificate of limited partnership may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-2e-112(3) in a manner inconsistent with that Subsection (2).

(4) A limited partnership is formed when:

(a) the certificate of limited partnership has become effective;

(b) at least two persons have become partners;

(c) at least one person has become a general partner; and

(d) at least one person has become a limited partner.

Enacted by Chapter 412, 2013 General Session

48-2e-202. Amendment of restatement of certificate of limited partnership.

(1) A certificate of limited partnership may be amended or restated at any time.

(2) To amend its certificate of limited partnership, a limited partnership must deliver to the division for filing an amendment stating:

(a) the name of the limited partnership;

(b) the date of filing of its initial certificate of limited partnership; and

(c) the changes the amendment makes to the certificate of limited partnership as most recently amended or restated.

(3) To restate its certificate of limited partnership, a limited partnership must deliver to the division for filing a restatement designated as such in its heading.

(4) A limited partnership shall promptly deliver to the division for filing an amendment to a certificate of limited partnership to reflect:

(a) the admission of a new general partner;

(b) the dissociation of a person as a general partner; or

(c) the appointment of a person to wind up the limited partnership's activities and affairs under Subsection 48-2e-802(3) or (4).

(5) If a general partner knows that any information in a filed certificate of limited partnership was inaccurate when the certificate of limited partnership was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:

(a) cause the certificate of limited partnership to be amended; or

(b) if appropriate, deliver to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-2e-208.

Enacted by Chapter 412, 2013 General Session

48-2e-203. Signing of records to be delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate of limited partnership.

(b) An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate of limited partnership.

(c) An amendment to the certificate of limited partnership designating as general partner a person admitted under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner must be signed by that person.

(d) An amendment to the certificate of limited partnership required by Subsection 48-2e-802(3) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person.

(e) Any other amendment to the certificate of limited partnership must be signed by:

(i) at least one general partner listed in the certificate of limited partnership;

(ii) each other person designated in the amendment as a new general partner; and

(iii) each person that the amendment indicates has dissociated as a general

partner, unless:

(A) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the division for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate of limited partnership, and, to the extent the restated certificate of limited partnership effects a change under any other subsection of this section, the certificate of limited partnership must be signed in a manner that satisfies that subsection.

(g) A statement of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to Subsection 48-2e-802(3) or (4) to wind up the dissolved limited partnership's activities and affairs.

(h) Any other record delivered by a limited partnership to the division for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(i) A statement by a person pursuant to Subsection 48-2e-605(1)(c) stating that the person has dissociated as a general partner must be signed by that person.

(j) A statement of negation by a person pursuant to Subsection 48-2e-306(1)(b) must be signed by that person.

(k) A record delivered on behalf of a foreign limited partnership to the division for filing must be signed by at least one general partner of the foreign limited partnership.

(l) Any other record delivered on behalf of any person to the division for filing must be signed by that person.

(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

Enacted by Chapter 412, 2013 General Session

48-2e-204. Signing and filing pursuant to judicial order.

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned.

(2) If the petitioner under Subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner shall make the limited partnership or foreign limited partnership a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Enacted by Chapter 412, 2013 General Session

48-2e-205. Filing requirements.

(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:

(a) The filing of the record must be required or permitted by this chapter.

(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.

(c) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The record must be signed by a person authorized under this chapter to sign the record.

(e) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter but the division may redact the information.

(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter, or law other than this chapter, must be paid in a manner permitted by the division or by that law.

(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

Enacted by Chapter 412, 2013 General Session

48-2e-206. Effective time and date.

Except as otherwise provided in Section 48-2e-207 and subject to Subsection 48-2e-208(4), a record filed under this chapter is effective:

(1) on the date and at the time of its filing by the division, as provided in Section 48-2e-209;

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);

(3) at a specified delayed effective time and date, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

Enacted by Chapter 412, 2013 General Session

48-2e-207. Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-2e-1124, 48-2e-1134, 48-2e-1144, and 48-2e-1154, a record delivered to the division for filing may be

withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

Enacted by Chapter 412, 2013 General Session

48-2e-208. Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

(a) the record at the time of filing was inaccurate;

(b) the record was defectively signed; or

(c) the electronic transmission of the record to the division was defective.

(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.

(3) A statement of correction:

(a) may not state a delayed effective date;

(b) must be signed by the person correcting the filed record;

(c) must identify the filed record to be corrected;

(d) must specify the inaccuracy or defect to be corrected; and

(e) must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-2e-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Enacted by Chapter 412, 2013 General Session

48-2e-209. Duty of division to file -- Review of refusal to file -- Transmission of information by the division.

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:

(a) return the record or notify the person that submitted the record of the refusal; and

(b) provide a brief explanation in a record of the reason for the refusal.

(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the filing is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

(a) in person to the person that submitted it;

(b) to the address of the person's registered agent;

(c) to the principal office of the person; or

(d) to another address the person provides to the division for delivery.

Enacted by Chapter 412, 2013 General Session

48-2e-210. Liability for inaccurate information in filed record.

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) a general partner if:

(i) the record was delivered for filing on behalf of the limited partnership; and

(ii) the general partner had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the general partner reasonably could have:

(A) effected an amendment under Section 48-2e-202;

(B) filed a petition under Section 48-2e-204; or

(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-2e-208.

(2) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Enacted by Chapter 412, 2013 General Session

48-2e-211. Certificate of good standing or registration.

(1) On request of any person, the division shall issue a certificate of good standing for a limited partnership or a certificate of registration for a registered foreign limited partnership.

(2) A certificate under Subsection (1) must state:

(a) the limited partnership's name or the registered foreign limited partnership's

name used in this state;

(b) in the case of a limited partnership:

(i) that a certificate of limited partnership has been filed and has taken effect;

(ii) the date the certificate of limited partnership became effective;

(iii) the period of the limited partnership's duration if the records of the division reflect that its period of duration is less than perpetual; and

(iv) that:

(A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;

(B) the records of the division do not otherwise reflect that the limited partnership has been dissolved or terminated; and

(C) a proceeding is not pending under Section 48-2e-810;

(c) in the case of a registered foreign limited partnership, that it is registered to do business in this state;

(d) that all fees, taxes, interest, and penalties owed to this state by the limited partnership or the registered foreign limited partnership and collected through the division have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the good standing or registration of the limited partnership or registered foreign limited partnership;

(e) that the most recent annual report required by Section 48-2e-212 has been delivered to the division for filing; and

(f) other facts reflected in the records of the division pertaining to the limited partnership or foreign limited partnership which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

Enacted by Chapter 412, 2013 General Session

48-2e-212. Annual report for division.

(1) A limited partnership or a registered foreign limited partnership shall deliver to the division for filing an annual report that states:

(a) the name of the limited partnership or foreign limited partnership;

(b) the information required by Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

(d) the name of at least one general partner; and

(e) in the case of a foreign limited partnership, the jurisdiction whose law governs the foreign limited partnership's internal affairs and any alternate name adopted under Subsection 48-2e-906(1).

(2) Information in the annual report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.

(3) A report must be delivered to the division for each year following the calendar year in which the limited partnership's certificate of limited partnership became effective or the registered foreign limited partnership registered to do business in this

state:

(a) in the case of a limited partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited partnership certificate of limited partnership became effective; and

(b) in the case of a registered foreign limited partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited partnership registered to do business in this state.

(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited partnership or registered foreign limited partnership in a record and return the report for correction.

(5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-2e-301. Becoming limited partners.

(1) Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

(2) After formation, a person becomes a limited partner:

(a) as provided in the partnership agreement;

(b) as the result of a transaction effective under Part 11, Merger, Interest Exchange, Conversion, and Domestication;

(c) with the affirmative vote or consent of all the partners; or

(d) as provided in Subsection 48-2e-801(1)(d) or (1)(e).

(3) A person may become a partner without:

(a) acquiring a transferable interest; or

(b) making or being obligated to make a contribution to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-302. No agency power of limited partner as limited partner.

(1) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(2) A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

Enacted by Chapter 412, 2013 General Session

48-2e-303. No liability as limited partner for limited partnership obligations.

(1) A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other

liability of the limited partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership.

(2) The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-304. Rights to information of limited partner and person dissociated as limited partner.

(1) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the limited partnership as is just and reasonable if:

(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) the information sought is directly connected to the limited partner's purpose.

(3) Not later than 10 days after receiving a demand pursuant to Subsection (2), the limited partnership in a record shall inform the limited partner that made the demand of:

(a) the information the limited partnership will provide in response to the demand and when and where the limited partnership will provide the information; and

(b) the limited partnership's reasons for declining, if the limited partnership declines to provide any demanded information.

(4) Whenever this chapter or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the limited partnership and is material to the limited partner's decision.

(5) Subject to Subsection (10), on 10 days' demand made in a record received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

(a) the information pertains to the period during which the person was a limited partner;

(b) the person seeks the information in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by Subsection (2).

(6) The limited partnership shall respond to a demand made pursuant to Subsection (5) in the manner provided in Subsection (3).

(7) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under Subsection (11) applies both to the agent or legal representative and to the limited partner or person dissociated as a limited partner.

(9) Subject to Subsection (10), the rights under this section do not extend to a person as transferee.

(10) If a limited partner dies, Section 48-2e-704 applies.

(11) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (11), the limited partnership has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-2e-305. Limited duties of limited partners.

(1) A limited partner shall discharge any duties to the limited partnership and the other partners under the partnership agreement and exercise any rights under this chapter or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

(2) Except as otherwise provided in Subsection (1), a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

(3) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

Enacted by Chapter 412, 2013 General Session

48-2e-306. Person erroneously believing self to be limited partner.

(1) Except as otherwise provided in Subsection (2), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing; or

(b) withdraws from future participation as an owner in the enterprise by signing

and delivering to the division for filing a statement of negation under this section.

(2) A person that makes an investment described in Subsection (1) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the division files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with Subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing, the person has the right to withdraw from the enterprise pursuant to Subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

Enacted by Chapter 412, 2013 General Session

48-2e-401. Becoming general partner.

(1) A person becomes a general partner:

(a) upon formation of a limited partnership, as agreed among the persons that are to be the initial partners; and

(b) after formation:

(i) as provided in the partnership agreement;

(ii) under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner;

(iii) as the result of a transaction effective under Part 11, Merger, Interest Exchange, Conversion, and Domestication; or

(iv) with the affirmative vote or consent of all the partners.

(2) A person may become a general partner without:

(a) acquiring a transferable interest; or

(b) making or being obligated to make a contribution to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-402. General partner agent of limited partnership.

(1) Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a record in the limited partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.

(2) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Enacted by Chapter 412, 2013 General Session

48-2e-403. Limited partnership liable for general partner's actionable conduct.

(1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities and affairs of the limited partnership or with the actual or apparent authority of the limited partnership.

(2) If, in the course of a limited partnership's activities and affairs or while acting with actual or apparent authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Enacted by Chapter 412, 2013 General Session

48-2e-404. General partner's liability.

(1) Except as otherwise provided in Subsections (2) and (3), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.

(3) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This Subsection (3) applies despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under Subsection 48-2e-406(2)(b).

(4) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner of the limited liability limited partnership for a debt, obligation, or liability of the limited partnership.

(5) An amendment of a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

Enacted by Chapter 412, 2013 General Session

48-2e-405. Actions by and against partnership and partners.

(1) To the extent not inconsistent with Section 48-2e-404, a general partner may

be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the general partner is personally liable for the claim under Section 48-2e-404, and:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that the limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-406. Management rights of general partner.

(1) Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as otherwise provided in this chapter, any matter relating to the activities and affairs of the limited partnership is decided exclusively by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The affirmative vote or consent of all partners is required to:

(a) amend the partnership agreement;

(b) amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;

(c) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs; and

(d) approve a transaction under Part 11, Merger, Interest Exchange, Conversion, and Domestication.

(3) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(4) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under Subsection (3) or Subsection 48-2e-408(1) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(5) A general partner is not entitled to remuneration for services performed for the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-407. Rights to information of general partner and person dissociated as general partner.

(1) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.

(2) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the limited partnership regarding the limited partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.

(3) A limited partnership shall furnish to each general partner:

(a) without demand, any information concerning the limited partnership's activities, affairs, financial condition, and other circumstances which the limited partnership knows and are material to the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter, except to the extent the limited partnership can establish that it reasonably believes the general partner already knows the information; and

(b) on demand, any other information concerning the limited partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(4) The duty to furnish information under Subsection (2) also applies to each general partner to the extent the general partner knows any of the information described in Subsection (2).

(5) Subject to Subsection (8), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in Subsections (1) and (2) at the locations specified in those subsections if:

(a) the information or record pertains to the period during which the person was a general partner;

(b) the person seeks the information or record in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by Subsection 48-2e-304(2).

(6) The limited partnership shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection 48-2e-304(3).

(7) A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the

partnership agreement or under Subsection (9) applies both to the agent or legal representative and the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but if:

(a) a general partner dies, Section 48-2e-704 applies; and

(b) an individual dissociates as a general partner under Subsection 48-2e-603(7)(b) or (7)(c), the legal representative of the individual may exercise the rights under Subsection (4) of a person dissociated as a general partner.

(10) In addition to any restriction or condition stated in the partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (10), the limited partnership has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-2e-408. Reimbursement, indemnification, advancement, and insurance.

(1) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the limited partnership, if the general partner complied with Sections 48-2e-406, 48-2e-409, and 48-2e-504 in making the payment.

(2) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-2e-406, 48-2e-409, or 48-2e-504.

(3) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the limited partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

(4) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under Subsection 48-2e-112(3)(h), the partnership agreement could not eliminate or limit the person's liability to the limited partnership for the conduct giving rise to the liability.

Enacted by Chapter 412, 2013 General Session

48-2e-409. Standards of conduct for general partners.

(1) A general partner owes to the limited partnership and, subject to Subsection 48-2e-1001(1), the other partners the duties of loyalty and care stated in Subsections (2) and (3).

(2) The duty of loyalty of a general partner includes the duties:

(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner:

(i) in the conduct or winding up of the limited partnership's activities and affairs;

(ii) from a use by the general partner of the limited partnership's property; or

(iii) from the appropriation of a limited partnership opportunity;

(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs as or on behalf of a person having an interest adverse to the limited partnership; and

(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs.

(3) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.

(6) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.

(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.

(8) If, as permitted by Subsection (6) or the partnership agreement, a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by Subsection (2)(b), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

Enacted by Chapter 412, 2013 General Session

48-2e-501. Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-502. Liability for contribution.

(1) A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, dissolution, or other inability to perform personally.

(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.

(3) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of any compromise under this subsection, the creditor may enforce the original obligation.

Enacted by Chapter 412, 2013 General Session

48-2e-503. Sharing of and right to distributions before dissolution.

(1) Except to the extent necessary to comply with a transfer effective under Section 48-2e-702 or charging order in effect under Section 48-2e-703, any distributions made by a limited partnership before its dissolution and winding up must be in equal shares among partners and persons dissociated as partners.

(2) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the limited partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Subsection 48-2e-813(5), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

Enacted by Chapter 412, 2013 General Session

48-2e-504. Limitations on distributions.

(1) A limited partnership may not make a distribution, including a distribution under Section 48-2e-813, if after the distribution:

(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities and affairs; or

(b) the limited partnership's total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the limited partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to those of persons receiving the distribution.

(2) A limited partnership may base a determination that a distribution is not prohibited under Subsection (1) on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:

(a) in the case of distribution as defined in Subsection 48-2e-102(4)(a), as of the earlier of:

(i) the date money or other property is transferred or debt is incurred by the limited partnership; or

(ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited partnership in return for the distribution;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.

(4) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(5) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not considered a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(6) In measuring the effect of a distribution under Section 48-2e-813, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under Section 48-2e-806, 48-2e-807, or 48-2e-808.

Enacted by Chapter 412, 2013 General Session

48-2e-505. Liability for improper distributions.

(1) If a general partner consents to a distribution made in violation of Section 48-2e-504 and in consenting to the distribution fails to comply with Section 48-2e-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-2e-504.

(2) A person that receives a distribution knowing that the distribution violated Section 48-2e-504 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-2e-504.

(3) A general partner against which an action is commenced because the general partner is liable under Subsection (1) may:

(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (2)

and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (2).

(4) An action under this section is barred unless commenced not later than two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-2e-601. Dissociation as limited partner.

(1) A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(2) A person is dissociated as a limited partner when:

(a) the limited partnership has notice of the person's express will to withdraw as a limited partner, but, if the person specified a withdrawal date later than the date the limited partnership had notice, on that later date;

(b) an event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

(c) the person is expelled as a limited partner pursuant to the partnership agreement;

(d) the person is expelled as a limited partner by the unanimous vote or consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities and affairs with the person as a limited partner;

(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than:

(A) a transfer for security purposes; or

(B) a charging order in effect under Section 48-2e-703 which has not been foreclosed;

(iii) the person is a corporation and:

(A) the limited partnership notifies the person that it will be expelled as a limited partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(B) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person is expelled as a limited partner by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under Subsection 48-2e-305(1); or

(iii) has engaged or is engaging in conduct relating to the limited partnership's

activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

(f) in the case of a person who is an individual, the individual dies;

(g) in the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(i) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(j) the limited partnership participates in a merger under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and:

(i) the limited partnership is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a limited partner;

(k) the limited partnership participates in an interest exchange under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and as a result of the interest exchange, the person ceases to be a limited partner;

(l) the limited partnership participates in a conversion under Part 11, Merger, Interest Exchange, Conversion, and Domestication;

(m) the limited partnership participates in a domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and as a result of the domestication, the person ceases to be a limited partner; or

(n) the limited partnership dissolves and completes winding up.

Enacted by Chapter 412, 2013 General Session

48-2e-602. Effect of dissociation as limited partner.

(1) If a person is dissociated as a limited partner:

(a) subject to Section 48-2e-704, the person does not have further rights as a limited partner;

(b) the person's contractual obligation of good faith and fair dealing as a limited partner under Subsection 48-2e-305(1) ends with regard to matters arising and events occurring after the person's dissociation; and

(c) subject to Section 48-2e-704 and Part 11, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

Enacted by Chapter 412, 2013 General Session

48-2e-603. Dissociation as general partner.

A person is dissociated as a general partner when:

(1) the limited partnership has notice of the person's express will to withdraw as a general partner, but, if the person specifies a withdrawal date later than the date the limited partnership had notice, on that later date;

(2) an event stated in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) the person is expelled as a general partner pursuant to the partnership agreement;

(4) the person is expelled as a general partner by the unanimous vote or consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities and affairs with the person as a general partner;

(b) there has been a transfer of all of the person's transferable interest in the limited partnership, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-2e-703 which has not been foreclosed;

(c) the person is a corporation, and:

(i) the limited partnership notifies the person that it will be expelled as a general partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership or a partner in a direct action under Section 48-2e-1001, the person is expelled as a general partner by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 48-2e-409; or

(c) has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities or affairs of the limited partnership with the person as a general partner;

(6) in the case of a person who is an individual:

(a) the individual dies;

(b) a guardian or general conservator for the individual is appointed; or

(c) a court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this chapter or the partnership agreement;

(7) the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(11) the limited partnership participates in a merger under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the limited partnership is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a general partner;

(12) the limited partnership participates in an interest exchange under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a general partner;

(13) the limited partnership participates in a conversion under Part 11, Merger, Interest Exchange, Conversion, and Domestication;

(14) the limited partnership participates in a domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a general partner; or

(15) the limited partnership dissolves and completes winding up.

Enacted by Chapter 412, 2013 General Session

48-2e-604. Power to dissociate as general partner -- Wrongful dissociation.

(1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under Subsection 48-2e-603(1).

(2) A person's dissociation as a general partner is wrongful only if the dissociation:

(a) is in breach of an express provision of the partnership agreement; or

(b) occurs before the completion of the winding up of the limited partnership, and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial order under Subsection 48-2e-603(5);

(iii) the person is dissociated as a general partner under Subsection 48-2e-603(7); or

(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a general

partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 48-2e-1001, to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the general partner to the limited partnership or the other partners.

Enacted by Chapter 412, 2013 General Session

48-2e-605. Effect of dissociation as general partner.

(1) If a person is dissociated as a general partner:

(a) the person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates;

(b) the person's duties and obligations as a general partner under Section 48-2e-409 end with regard to matters arising and events occurring after the person's dissociation;

(c) the person may sign and deliver to the division for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general partner; and

(d) subject to Section 48-2e-704 and Part 11, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person solely as a transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a general partner.

Enacted by Chapter 412, 2013 General Session

48-2e-606. Power to bind and liability of person dissociated as general partner.

(1) After a person is dissociated as a general partner and before the limited partnership is merged out of existence, converted, or domesticated under Part 11, Merger, Interest Exchange, Conversion, and Domestication, or dissolved, the limited partnership is bound by an act of the person only if:

(a) the act would have bound the limited partnership under Section 48-2e-402 before the dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under Subsection (1), the person dissociated as a general partner which caused the limited partnership to be bound is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under Subsection (1); and

(b) if a general partner or another person dissociated as a general partner is

liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Enacted by Chapter 412, 2013 General Session

48-2e-607. Liability to other persons of person dissociated as general partner.

(1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in Subsections (2) and (3), the person is not liable for a limited partnership obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities and affairs is liable to the same extent as a general partner under Section 48-2e-404 on an obligation incurred by the limited partnership under Section 48-2e-804.

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) a general partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation; and

(ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with knowledge or notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Enacted by Chapter 412, 2013 General Session

48-2e-701. Nature of transferable interest.

The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

Enacted by Chapter 412, 2013 General Session

48-2e-702. Transfer of transferable interest.

(1) A transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause the person's dissociation or a dissolution and

winding up of the limited partnership's activities and affairs; and

(c) subject to Section 48-2e-704, does not entitle the transferee to:

(i) participate in the management or conduct of the limited partnership's activities or affairs; or

(ii) except as otherwise provided in Subsection (3), have access to required information, records, or other information concerning the limited partnership's activities and affairs.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of a limited partnership, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership knows or has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in Subsections 48-2e-601(2)(d)(ii) and 48-2e-603(4)(b), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

(8) If a general or limited partner transfers a transferable interest to a person that becomes a general or limited partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under Sections 48-2e-502 and 48-2e-505 known to the transferee when the transferee becomes a partner.

Enacted by Chapter 412, 2013 General Session

48-2e-703. Charging order.

(1) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited partnership has been served with the charging order, requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the

judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to Section 48-2e-702.

(4) At any time before foreclosure under Subsection (3), the partner or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under Subsection (3), a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a partner or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Enacted by Chapter 412, 2013 General Session

48-2e-704. Power of legal representative of deceased partner.

If a partner dies, the deceased partner's legal representative may exercise:

(1) the rights of a transferee provided in Subsection 48-2e-702(3); and

(2) for the purposes of settling the estate, the rights of a current limited partner under Section 48-2e-304.

Enacted by Chapter 412, 2013 General Session

48-2e-801. Events causing dissolution.

(1) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(a) an event or circumstance that the partnership agreement states causes dissolution;

(b) the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;

(c) after the dissociation of a person as a general partner:

(i) if the limited partnership has at least one remaining general partner, the vote or consent to dissolve the limited partnership not later than 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(ii) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(A) consent to continue the activities and affairs of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be

effective; and

(B) at least one person is admitted as a general partner in accordance with the consent;

(d) the passage of 90 consecutive days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner;

(e) the passage of 90 consecutive days during which the limited partnership has only one partner, unless before the end of the period:

(i) the limited partnership admits at least one person as a partner;

(ii) if the previously sole remaining partner is only a general partner, the limited partnership admits the person as a limited partner; and

(iii) if the previously sole remaining partner is only a limited partner, the limited partnership admits a person as a general partner;

(f) on application by a partner, the entry by the district court of an order dissolving the limited partnership on the grounds that:

(i) the conduct of all or substantially all the limited partnership's activities and affairs is unlawful; or

(ii) it is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the partnership agreement; or

(g) the signing and filing of a statement of administrative dissolution by the division under Section 48-2e-810.

(2) If an event occurs that imposes a deadline on a limited partnership under Subsection (1) and before the limited partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the limited partnership under Subsection (1):

(a) the occurrence of the second event does not affect the deadline caused by the first event; and

(b) the limited partnership's meeting of the requirements of the first deadline does not extend the second deadline.

Enacted by Chapter 412, 2013 General Session

48-2e-802. Winding up.

(1) A dissolved limited partnership shall wind up its activities and affairs, and, except as otherwise provided in Section 48-2e-803, the limited partnership continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, the limited partnership:

(a) shall discharge the limited partnership's debts, obligations, and other liabilities, settle and close the limited partnership's activities and affairs, and marshal and distribute the assets of the limited partnership; and

(b) may:

(i) amend its certificate of limited partnership to state that the limited partnership is dissolved;

(ii) preserve the limited partnership activities, affairs, and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or

administrative;

(iv) transfer the limited partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited partnership and that the limited partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this Subsection (3):

(a) has the powers of a general partner under Section 48-2e-804 but is not liable for the debts, obligations, and other liabilities of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved limited partnership's activities and affairs; and

(b) shall deliver promptly to the division for filing an amendment to the certificate of limited partnership stating:

(i) that the limited partnership does not have a general partner;

(ii) the name and street and mailing addresses of the person; and

(iii) that the person has been appointed pursuant to this subsection to wind up the limited partnership.

(4) On the application of any partner, the district court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs, if:

(a) the limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to Subsection (3); or

(b) the applicant establishes other good cause.

Enacted by Chapter 412, 2013 General Session

48-2e-803. Rescinding dissolution.

(1) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the limited partnership is effective, the district court has entered an order under Subsection 48-2e-801(1)(f) dissolving the limited partnership, or the division has dissolved the limited partnership under Section 48-2e-810.

(2) Rescinding dissolution under this section requires:

(a) the affirmative vote or consent of each partner; and

(b) if the limited partnership has delivered to the division for filing an amendment to the certificate of limited partnership stating that the partnership is dissolved and if:

(i) the amendment is not effective, the filing by the limited partnership of a statement of withdrawal under Section 48-2e-207 applicable to the amendment; or

(ii) the amendment is effective, the delivery by the limited partnership to the division for filing of an amendment to the certificate of limited partnership stating that the dissolution has been rescinded under this section.

(3) If a limited partnership rescinds its dissolution:

(a) the limited partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the limited partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Enacted by Chapter 412, 2013 General Session

48-2e-804. Power to bind partnership after dissolution.

(1) A limited partnership is bound by a general partner's act after dissolution which:

(a) is appropriate for winding up the limited partnership's activities and affairs; or

(b) would have bound the limited partnership under Section 48-2e-402 before dissolution, if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) the act:

(i) is appropriate for winding up the limited partnership's activities and affairs; or

(ii) would have bound the limited partnership under Section 48-2e-402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Enacted by Chapter 412, 2013 General Session

48-2e-805. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.

(1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Subsection 48-2e-804(1) by an act that is not appropriate for winding up the limited partnership's activities and affairs, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Subsection 48-2e-804(2), the person is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the obligation.

Enacted by Chapter 412, 2013 General Session

48-2e-806. Known claims against dissolved limited partnership.

(1) Except as otherwise provided in Subsection (4), a dissolved limited partnership may give notice of a known claim under Subsection (2), which has the effect provided in Subsection (3).

(2) A dissolved limited partnership may in a record notify its known claimants of the dissolution. The notice must:

(a) specify the information required to be included in a claim;

(b) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(c) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;

(d) state that the claim will be barred if not received by the deadline; and

(e) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2e-404.

(3) A claim against a dissolved limited partnership is barred if the requirements of Subsection (2) are met, and:

(a) the claim is not received by the specified deadline; or

(b) if the claim is timely received but rejected by the limited partnership:

(i) the limited partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the limited partnership to enforce the claim not later than 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-2e-807. Other claims against dissolved limited partnership.

(1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the dissolved limited partnership to present them in accordance with the notice.

(2) A notice under Subsection (1) must:

(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited partnership's principal office is located

or, if the principal office is not located in this state, in the county in which the office of the dissolved limited partnership's registered agent is or was last located and in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the dissolved limited partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; and

(d) unless the dissolved limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the dissolved limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2e-404.

(3) If a dissolved limited partnership publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership not later than three years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under Section 48-2e-806;

(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(4) A claim not barred under this section or Section 48-2e-806 may be enforced:

(a) against the dissolved limited partnership, to the extent of its undistributed assets;

(b) except as otherwise provided in Section 48-2e-808, if the assets of the dissolved limited partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the dissolved limited partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution; and

(c) against any person liable on the claim under Sections 48-2e-404 and 48-2e-607.

Enacted by Chapter 412, 2013 General Session

48-2e-808. Court proceedings.

(1) A dissolved limited partnership that has published a notice under Section 48-2e-807 may file an application with the district court in the county where the dissolved limited partnership's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is

or is reasonably anticipated to be barred under Subsection 48-2e-807(3).

(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited partnership.

(3) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(4) A dissolved limited partnership that provides security in the amount and form ordered by the court under Subsection (1) satisfies the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a partner or transferee that received assets in liquidation.

Enacted by Chapter 412, 2013 General Session

48-2e-809. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under Section 48-2e-806, 48-2e-807, or 48-2e-808, any corresponding claim under Section 48-2e-404 or 48-2e-607 is also barred.

Enacted by Chapter 412, 2013 General Session

48-2e-810. Administrative dissolution.

(1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited partnership administratively if the limited partnership does not:

(a) pay any fee, tax, or penalty required to be paid to the division not later than 60 days after it is due;

(b) deliver an annual report to the division not later than 60 days after it is due; or

(c) have a registered agent in this state for 60 consecutive days.

(2) If the division determines that one or more grounds exist for administratively dissolving a limited partnership, the division shall serve the limited partnership with notice in a record of the division's determination.

(3) If a limited partnership, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the limited partnership by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited partnership pursuant to Section 48-2e-209.

(4) A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-2e-802, 48-2e-806,

48-2e-807, 48-2e-808, and 48-2e-813 or to apply for reinstatement under Section 48-2e-811.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.

Enacted by Chapter 412, 2013 General Session

48-2e-811. Reinstatement.

(1) A limited partnership that is administratively dissolved under Section 48-2e-810 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must state:

(a) the name of the limited partnership at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-2e-108;

(b) the address of the principal office of the limited partnership and the name and address of its registered agent;

(c) the effective date of the limited partnership's administrative dissolution; and

(d) that the grounds for dissolution did not exist or have been cured.

(2) To be reinstated, a limited partnership must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited partnership was administratively dissolved.

(3) If the division determines that an application under Subsection (1) contains the information required, is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:

(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;

(b) file the statement of reinstatement; and

(c) serve a copy of the statement of reinstatement on the limited partnership.

(4) When reinstatement under this section is effective, the following rules apply:

(a) The restatement relates back to and takes effect as of the effective date of the administrative dissolution.

(b) The limited partnership resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

Enacted by Chapter 412, 2013 General Session

48-2e-812. Judicial review of denial of reinstatement.

(1) If the division denies a limited partnership's application for reinstatement following administrative dissolution, the division shall serve the limited partnership with notice in a record that explains the reasons for the denial.

(2) A limited partnership may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.

Enacted by Chapter 412, 2013 General Session

48-2e-813. Disposition of assets in winding up -- When contributions required.

(1) In winding up its activities and affairs, a limited partnership shall apply its assets, including the contributions required by this section, to discharge the limited partnership's obligations to creditors, including partners that are creditors.

(2) After a limited partnership complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-2e-703:

(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the limited partnership, except to the extent necessary to comply with any transfer effective under Section 48-2e-702.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 48-2e-607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under Subsection (3)(a) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.

(d) A person that makes an additional contribution under Subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under Subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(4) If a limited partnership does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(5) All distributions made under Subsections (2) and (4) must be paid in money.

Enacted by Chapter 412, 2013 General Session

48-2e-901. Governing law.

(1) The law of the jurisdiction of formation of a foreign limited partnership governs:

(a) the internal affairs of the foreign limited partnership; and

(b) the liability of a partner as partner for a debt, obligation, or other liability of the foreign limited partnership.

(2) A foreign limited partnership is not precluded from registering to do business in this state because of any difference between the law of its jurisdiction of formation and the law of this state.

(3) Registration of a foreign limited partnership to do business in this state does not authorize the foreign limited partnership to engage in any activities and affairs or exercise any power that a limited partnership may not engage in or exercise in this state.

(4) (a) The division may permit a tribal limited partnership to apply for authority to transact business in the state in the same manner as a foreign limited partnership formed in another state.

(b) If a tribal limited partnership elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited partnership formed under the laws of another state.

Enacted by Chapter 412, 2013 General Session

48-2e-902. Registration to do business in this state.

(1) A foreign limited partnership may not do business in this state until it registers with the division under this part.

(2) A foreign limited partnership doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(3) The failure of a foreign limited partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited partnership or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a general partner or limited partners of a foreign limited partnership is not waived solely because the foreign limited partnership does business in this state without registering to do business in this state.

(5) Subsections 48-2e-901(1) and (2) apply even if the foreign limited partnership fails to register under this part.

Enacted by Chapter 412, 2013 General Session

48-2e-903. Foreign registration statement.

To register to do business in this state, a foreign limited partnership must deliver a foreign registration statement to the division for filing. The statement must state:

(1) the name of the foreign limited partnership and, if the name does not comply

with Section 48-2e-108, an alternate name adopted pursuant to Subsection 48-2e-906(1);

(2) that the limited partnership is a foreign limited partnership;

(3) the name of the foreign limited partnership's jurisdiction of formation;

(4) the street and mailing addresses of the foreign limited partnership's principal office and, if the law of the foreign limited partnership's jurisdiction of formation requires the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the information required by Subsection 16-17-203(1).

Enacted by Chapter 412, 2013 General Session

48-2e-904. Amendment of foreign registration.

A registered foreign limited partnership shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the foreign limited partnership;

(2) the foreign limited partnership's jurisdiction of formation;

(3) an address required by Subsection 48-2e-903(4); or

(4) the information required by Subsection 48-2e-903(5).

Enacted by Chapter 412, 2013 General Session

48-2e-905. Activities not constituting doing business.

(1) Activities of a foreign limited partnership which do not constitute doing business in this state under this part include:

(a) maintaining, defending, mediating, arbitrating, and settling an action or proceeding;

(b) carrying on any activity concerning its internal affairs, including holding meetings of its partners;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign limited partnership or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property;

(i) conducting an isolated transaction that is not in the course of similar transactions;

(j) owning, without more, property; and

(k) doing business in interstate commerce.

(2) A person does not do business in this state solely by being a partner of a foreign limited partnership that does business in this state. This section does not apply

in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under law of this state other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-2e-906. Noncomplying name of foreign limited partnership.

(1) A foreign limited partnership whose name does not comply with Section 48-2e-108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-2e-108. A registered foreign limited partnership that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign limited partnership shall do business in this state under:

(a) the alternate name;

(b) the foreign limited partnership's name, with the addition of its jurisdiction of formation; or

(c) an assumed or fictitious name the foreign limited partnership is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(2) If a registered foreign limited partnership changes its name to one that does not comply with Section 48-2e-108, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-2e-108.

Enacted by Chapter 412, 2013 General Session

48-2e-907. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited partnership that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

Enacted by Chapter 412, 2013 General Session

48-2e-908. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(1) A registered foreign limited partnership that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:

(a) in the case of a foreign limited partnership that has completed winding up:

(i) its name and jurisdiction of formation; and

(ii) that the foreign limited partnership surrenders its registration to do business in this state as a registered foreign limited partnership; and

(b) in the case of a foreign limited partnership that has converted:

(i) the name of the converting foreign limited partnership and its jurisdiction of formation;

(ii) the type of entity to which the foreign limited partnership has converted and its jurisdiction of formation;

(iii) that the converted entity surrenders the converting partnership's registration to do business in this state and revokes the authority of the converting foreign limited partnership's registered agent to act as registered agent in this state on the behalf of the foreign limited partnership or the converted entity; and

(iv) a mailing address to which service of process may be made under Subsection (2).

(2) After a withdrawal under this section of a foreign limited partnership that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-2e-909. Transfer of registration.

(1) When a registered foreign limited partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:

(a) the name of the registered foreign limited partnership before the merger or conversion;

(b) that before the merger or conversion the registration pertained to a foreign limited partnership;

(c) the name of the applicant foreign entity into which the foreign limited partnership has merged or to which it has been converted, and, if the name does not comply with Section 48-2e-108 or similar provision of law of this state governing an entity of the same type as the applicant foreign entity, an alternate name adopted pursuant to Subsection 48-2e-906(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;

(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(f) the information required under Subsection 16-17-203(1).

(2) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without interruption to the foreign entity into which the foreign limited partnership has merged or to which it has been converted.

Enacted by Chapter 412, 2013 General Session

48-2e-910. Termination of registration.

(1) The division may terminate the registration of a registered foreign limited partnership in the manner provided in Subsections (2) and (3) if the foreign limited partnership does not:

(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;

(b) deliver to the division for filing, not later than 60 days after the due date, an annual report;

(c) have a registered agent as required by Section 48-2e-111; or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.

(2) The division may terminate the registration of a registered foreign limited partnership by:

(a) filing a notice of termination or noting the termination in the records of the division; and

(b) delivering a copy of the notice or the information in the notation to the foreign limited partnership's registered agent, or if the foreign limited partnership does not have a registered agent, to the foreign limited partnership's principal office.

(3) The notice must state or the information in the notation under Subsection (2) must include:

(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and

(b) the grounds for termination under Subsection (1).

(4) The authority of the registered foreign limited partnership to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited partnership cures each ground for termination stated in the notice or notation. If the foreign limited partnership cures each ground, the division shall file a record so stating.

Enacted by Chapter 412, 2013 General Session

48-2e-911. Withdrawal of registration of registered foreign limited partnership.

(1) A registered foreign limited partnership may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:

(a) the name of the foreign limited partnership and its jurisdiction of formation;

(b) that the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) an address to which service of process may be made under Subsection (2).

(2) After the withdrawal of the registration of a partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-2e-912. Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited partnership from doing business in this state in violation of this part.

Enacted by Chapter 412, 2013 General Session

48-2e-1001. Direct action by partner.

(1) Subject to Subsection (2), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the limited partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1002. Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) a demand under Subsection (1) would be futile.

Enacted by Chapter 412, 2013 General Session

48-2e-1003. Proper plaintiff.

A derivative action to enforce a right of a limited partnership may be maintained only by a person that is a partner at the time the action is commenced and:

(1) which was a partner when the conduct giving rise to the action occurred; or

(2) whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

Enacted by Chapter 412, 2013 General Session

48-2e-1004. Pleading.

In a derivative action to enforce a right of a limited partnership, the complaint must state with particularity:

(1) the date and content of the plaintiff's demand and the response to the demand by the general partner; or

(2) why demand should be excused as futile.

Enacted by Chapter 412, 2013 General Session

48-2e-1005. Special litigation committee.

(1) If a limited partnership is named as or made a party in a derivative proceeding, the limited partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(a) enforcing a person's right to information under Section 48-2e-304 or 48-2e-407; or

(b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners.

(3) A special litigation committee may be appointed:

(a) by a majority of the general partners not named as parties in the proceeding; and

(b) if all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:

(a) continue under the control of the plaintiff;

(b) continue under the control of the committee;

(c) be settled on terms approved by the committee; or

(d) be dismissed.

(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the

determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session

48-2e-1006. Proceeds and expenses.

(1) Except as otherwise provided in Subsection (2):

(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and

(b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited partnership.

(3) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the court's approval.

Enacted by Chapter 412, 2013 General Session

48-2e-1101. Definitions.

In this part:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Sections 48-2e-1141 through 48-2e-1146.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-2e-1143 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(8) "Domesticated limited partnership" means the domesticating limited partnership as it continues in existence after a domestication.

(9) "Domesticating limited partnership" means the domestic limited partnership that approves a plan of domestication pursuant to Section 48-2e-1153 or the foreign limited partnership that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Sections 48-2e-1151 through 48-2e-1156.

(11) "Entity":

(a) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a limited cooperative association;

(vii) an unincorporated nonprofit association;

(viii) a statutory trust, business trust, or common-law business trust; or

(ix) any other person that has:

(A) a legal existence separate from any interest holder of that person; or

(B) the power to acquire an interest in real property in its own name; and

(b) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose, or a charitable trust;

(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.

(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning, or the books and records of, the entity;

(b) vote for or consent to the election of the governors of the entity; or

(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(15) "Governor" means:

(a) a director of a business corporation;

(b) a director or trustee of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

(e) a manager of a manager-managed limited liability company;

(f) a member of a member-managed limited liability company;

(g) a director of a limited cooperative association;

(h) a manager of an unincorporated nonprofit association;

(i) a trustee of a statutory trust, business trust, or common-law business trust; or

(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) "Interest" means:

(a) a share in a business corporation;

(b) a membership in a nonprofit corporation;

(c) a partnership interest in a general partnership;

(d) a partnership interest in a limited partnership;

(e) a membership interest in a limited liability company;

(f) a member's interest in a limited cooperative association;

(g) a membership in an unincorporated nonprofit association;

(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or

(i) a governance interest or distributional interest in any other type of unincorporated entity.

(17) "Interest exchange" means a transaction authorized by Sections 48-2e-1131 through 48-2e-1136.

(18) "Interest holder" means:

(a) a shareholder of a business corporation;

(b) a member of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

(e) a limited partner of a limited partnership;

(f) a member of a limited liability company;

(g) a member of a limited cooperative association;

(h) a member of an unincorporated nonprofit association;

(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(j) any other direct holder of an interest.

(19) "Interest holder liability" means:

(a) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(21) "Merger" means a transaction authorized by Sections 48-2e-1121 through 48-2e-1126.

(22) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(23) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(24) "Organic rules" means the public organic record and private organic rules of an entity.

(25) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(26) "Plan of conversion" means a plan under Section 48-2e-1142.

(27) "Plan of domestication" means a plan under Section 48-2e-1152.

(28) "Plan of interest exchange" means a plan under Section 48-2e-1132.

(29) "Plan of merger" means a plan under Section 48-2e-1122.

(30) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(a) the bylaws of a business corporation;

(b) the bylaws of a nonprofit corporation;

(c) the partnership agreement of a general partnership;

(d) the partnership agreement of a limited partnership;

(e) the operating agreement of a limited liability company;

(f) the bylaws of a limited cooperative association;

(g) the governing principles of an unincorporated nonprofit association; and

(h) the trust instrument of a statutory trust or similar rules of a business trust or a common-law business trust.

(31) "Protected agreement" means:

(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;

(b) an agreement that is binding on an entity on January 1, 2014;

(c) the organic rules of an entity in effect on January 1, 2014; or

(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.

(32) "Public organic record" means the record, the filing of which by the division is required to form an entity, and any amendment to or restatement of that record. The term includes:

(a) the articles of incorporation of a business corporation;

(b) the articles of incorporation of a nonprofit corporation;

(c) the certificate of limited partnership of a limited partnership;

(d) the certificate of organization of a limited liability company;

(e) the articles of organization of a limited cooperative association; and

(f) the certificate of trust of a statutory trust or similar record of a business trust.

(33) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.

(34) "Statement of conversion" means a statement under Section 48-2e-1145.

(35) "Statement of domestication" means a statement under Section 48-2e-1155.

(36) "Statement of interest exchange" means a statement under Section 48-2e-1135.

(37) "Statement of merger" means a statement under Section 48-2e-1125.

(38) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(39) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

Enacted by Chapter 412, 2013 General Session

48-2e-1102. Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this part.

Enacted by Chapter 412, 2013 General Session

48-2e-1103. Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Enacted by Chapter 412, 2013 General Session

48-2e-1104. Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

Enacted by Chapter 412, 2013 General Session

48-2e-1105. Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

Enacted by Chapter 412, 2013 General Session

48-2e-1106. Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

Enacted by Chapter 412, 2013 General Session

48-2e-1107. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

Enacted by Chapter 412, 2013 General Session

48-2e-1108. Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(a) the organic law permits the organic rules to limit the availability of appraisal rights; and

(b) the organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:

(a) the entity's organic rules; or

(b) the plan.

Enacted by Chapter 412, 2013 General Session

48-2e-1121. Merger authorized.

(1) By complying with Sections 48-2e-1121 through 48-2e-1126:

(a) one or more domestic limited partnerships may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(b) two or more foreign entities may merge into a domestic limited partnership.

(2) By complying with the provisions of Sections 48-2e-1121 through 48-2e-1126 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-2e-1121 through 48-2e-1126 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-2e-1122. Plan of merger.

(1) A domestic limited partnership may become a party to a merger under Sections 48-2e-1121 through 48-2e-1126 by approving a plan of merger. The plan must be in a record and contain:

(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;

(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(f) the other terms and conditions of the merger; and

(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1123. Approval of merger.

(1) A plan of merger is not effective unless it has been approved:

(a) by a domestic merging limited partnership, by all the partners of the limited partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of a domestic merging limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(i) the partnership agreement of the limited partnership in a record provides for the approval of a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and

(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A merger involving a domestic merging entity that is not a limited partnership is not effective unless the merger is approved by that entity in accordance with its organic law.

(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-2e-1124. Amendment or abandonment of plan of merger.

(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic merging limited partnership may approve an amendment of a plan of merger:

(a) in the same manner as the plan was approved, if the plan does not provide

for the manner in which it may be amended; or

(b) by the partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited partnership may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the plan of merger;

(b) the date on which the statement of merger was delivered to the division for filing; and

(c) a statement that the merger has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-2e-1125. Statement of merger.

(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.

(2) A statement of merger must contain:

(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(b) the name, jurisdiction of formation, and type of entity of the surviving entity;

(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-2e-1121 through 48-2e-1126 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(f) if the surviving entity is created by the merger and is a domestic limited

liability partnership, its statement of qualification, as an attachment; and

(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1126(5).

(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.

(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-2e-1126. Effect of merger.

(1) When a merger becomes effective:

(a) the surviving entity continues or comes into existence;

(b) each merging entity that is not the surviving entity ceases to exist;

(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(f) if the surviving entity exists before the merger:

(i) all its property continues to be vested in it without transfer, reversion, or impairment;

(ii) it remains subject to all its debts, obligations, and other liabilities; and

(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(h) if the surviving entity exists before the merger:

(i) its public organic record, if any, is amended as provided in the statement of merger; and

(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(i) if the surviving entity is created by the merger:

(i) its public organic record, if any, is effective; and

(ii) its private organic rules are effective; and

(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights

provided to them under the plan of merger and to any appraisal rights they have under Section 48-2e-1108 and the merging entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the merging entity.

(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.

(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.

(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.

(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.

(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section 16-17-301.

(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

Enacted by Chapter 412, 2013 General Session

48-2e-1131. Interest exchange authorized.

(1) By complying with Sections 48-2e-1131 through 48-2e-1136:

(a) a domestic limited partnership may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(b) all of one or more classes or series of interests of a domestic limited partnership may be acquired by another domestic or foreign entity in exchange for

interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing.

(2) By complying with the provisions of Sections 48-2e-1131 through 48-2e-1136 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-2e-1131 through 48-2e-1136 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited partnership is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-2e-1132. Plan of interest exchange.

(1) A domestic limited partnership may be the acquired entity in an interest exchange under Sections 48-2e-1131 through 48-2e-1136 by approving a plan of interest exchange. The plan must be in a record and contain:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) any proposed amendments to the certificate of limited partnership or partnership agreement that are, or are proposed to be, in a record of the acquired entity;

(e) the other terms and conditions of the interest exchange; and

(f) any other provision required by the law of this state or the partnership agreement of the acquired entity.

(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1133. Approval of interest exchange.

(1) A plan of interest exchange is not effective unless it has been approved:

(a) by all the partners of a domestic acquired limited partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of the domestic acquired limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:

(i) the partnership agreement of the limited partnership in a record provides for the approval of an interest exchange or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all of the partners; and

(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) An interest exchange involving a domestic acquired entity that is not a limited partnership is not effective unless it is approved by the domestic entity in accordance with its organic law.

(3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

Enacted by Chapter 412, 2013 General Session

48-2e-1134. Amendment or abandonment of plan of interest exchange.

(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic acquired limited partnership may approve an amendment of a plan of interest exchange:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the acquired limited partnership under the plan;

(ii) the certificate of limited partnership or partnership agreement of the acquired limited partnership that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the partners of the acquired limited partnership under this chapter or the partnership agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited partnership may abandon the plan in the same manner as the plan was approved.

(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited partnership, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the acquired limited partnership;

(b) the date on which the statement of interest exchange was delivered to the

division for filing; and

(c) a statement that the interest exchange has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-2e-1135. Statement of interest exchange.

(1) A statement of interest exchange must be signed by a domestic acquired limited partnership and delivered to the division for filing.

(2) A statement of interest exchange must contain:

(a) the name of the acquired limited partnership;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) a statement that the plan of interest exchange was approved by the acquired entity in accordance with Sections 48-2e-1131 through 48-2e-1136; and

(d) any amendments to the acquired limited partnership's certificate of limited partnership approved as part of the plan of interest exchange.

(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.

(4) A plan of interest exchange that is signed by a domestic acquired limited partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this Subsection (4), references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

Enacted by Chapter 412, 2013 General Session

48-2e-1136. Effect of interest exchange.

(1) When an interest exchange in which the acquired entity is a domestic limited partnership becomes effective:

(a) the interests in the domestic acquired limited partnership that are the subject of the interest exchange cease to exist or are converted or exchanged, and the partners holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-2e-1108;

(b) the acquiring entity becomes the interest holder of the interests in the acquired limited partnership stated in the plan of interest exchange to be acquired by the acquiring entity;

(c) the certificate of limited partnership of the acquired limited partnership is amended as provided in the statement of interest exchange; and

(d) the provisions of the partnership agreement of the acquired limited partnership that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(2) Except as otherwise provided in the partnership agreement of a domestic acquired limited partnership, the interest exchange does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the acquired limited partnership.

(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited partnership and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited partnership with respect to which the person had interest holder liability is as follows:

(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by other law, this chapter, or the partnership agreement of the acquired entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

Enacted by Chapter 412, 2013 General Session

48-2e-1141. Conversion authorized.

(1) By complying with Sections 48-2e-1141 through 48-2e-1146 a domestic limited partnership may become:

(a) a domestic entity that is a different type of entity; or

(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-2e-1141 through 48-2e-1146 applicable to foreign entities, a foreign entity that is not a foreign limited partnership may become a domestic limited partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-2e-1142. Plan of conversion.

(1) A domestic limited partnership may convert to a different type of entity under Sections 48-2e-1141 through 48-2e-1146 by approving a plan of conversion. The plan must be in a record and contain:

(a) the name of the converting limited partnership;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner of converting the interests in the converting limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed public organic record of the converted entity if it will be a filing entity;

(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(f) the other terms and conditions of the conversion; and

(g) any other provision required by the law of this state or the partnership agreement of the converting limited partnership.

(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1143. Approval of conversion.

(1) A plan of conversion is not effective unless it has been approved:

(a) by a domestic converting limited partnership by all of the partners of the limited partnership entitled to vote on or consent to any matter; and

(b) in a record, by each partner of a domestic converting limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:

(i) the partnership agreement of the limited partnership provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A conversion involving a domestic converting entity that is not a limited partnership is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-2e-1144. Amendment or abandonment of plan of conversion.

(1) A plan of conversion of a domestic converting limited partnership may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting entity under the plan;

(ii) the public organic record or private organic rules of the converted entity that

will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(2) After a plan of conversion has been approved by a domestic converting limited partnership and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited partnership may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the converting limited partnership;

(b) the date on which the statement of conversion was delivered to the division for filing; and

(c) a statement that the conversion has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-2e-1145. Statement of conversion.

(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.

(2) A statement of conversion must contain:

(a) the name, jurisdiction of formation, and type of entity of the converting entity;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-2e-1141 through 48-2e-1146 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;

(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1146(5).

(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.

(4) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does

not need to be signed.

(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-2e-1146. Effect of conversion.

(1) When a conversion in which the converted entity is a domestic limited partnership becomes effective:

(a) the converted entity is:

(i) organized under and subject to this chapter; and

(ii) the same entity without interruption as the converting entity;

(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) the provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(g) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-2e-1108 and the converting entity's organic law.

(2) Except as otherwise provided in the partnership agreement of a domestic converting limited partnership, the conversion does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic limited partnership with respect to which the person had interest holder liability is as follows:

(a) The conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective.

(b) The person does not have interest holder liability for any debt, obligation, or

other liability that arises after the conversion becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 16-17-301.

(6) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Enacted by Chapter 412, 2013 General Session

48-2e-1151. Domestication authorized.

(1) By complying with Sections 48-2e-1151 through 48-2e-1156, a domestic limited partnership may become a foreign limited partnership if the domestication is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-2e-1151 through 48-2e-1156 applicable to foreign limited partnerships, a foreign limited partnership may become a domestic limited partnership if the domestication is authorized by the law of the foreign limited partnership's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a domestication, the provision applies to a domestication of the limited partnership as if the domestication were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-2e-1152. Plan of domestication.

(1) A domestic limited partnership may become a foreign limited partnership in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(a) the name of the domesticating limited partnership;

(b) the name and jurisdiction of formation of the domesticated limited partnership;

(c) the manner of converting the interests in the domesticating limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed certificate of limited partnership of the domesticated limited partnership;

(e) the full text of the partnership agreement of the domesticated limited partnership rights to acquire interests or securities, that are proposed to be in a record;

(f) the other terms and conditions of the domestication; and

(g) any other provision required by the law of this state or the partnership

agreement of the domesticating limited partnership.

(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1153. Approval of domestication.

(1) A plan of domestication of a domestic domesticating limited partnership is not effective unless it has been approved:

(a) by all the partners entitled to vote on or consent to any matter; and

(b) in a record, by each partner that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:

(i) the partnership agreement of the entity in a record provide for the approval of a domestication or merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and

(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(2) A domestication of a foreign domesticating limited partnership is not effective unless it is approved in accordance with the law of the foreign limited partnership's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-2e-1154. Amendment or abandonment of plan of domestication.

(1) A plan of domestication of a domestic domesticating limited partnership may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the domesticating limited partnership under the plan;

(ii) the certificate of limited partnership or partnership agreement of the domesticated limited partnership that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the partners of the domesticated limited partnership under its organic law or partnership agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating limited partnership and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, by a domestic domesticating limited partnership may abandon the plan in the

same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the limited partnership, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the domesticating limited partnership;

(b) the date on which the statement of domestication was delivered to the division for filing; and

(c) a statement that the domestication has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-2e-1155. Statement of domestication.

(1) A statement of domestication must be signed by the domesticating limited partnership and delivered to the division for filing.

(2) A statement of domestication must contain:

(a) the name and jurisdiction of formation of the domesticating limited partnership;

(b) the name and jurisdiction of formation of the domesticated limited partnership;

(c) if the domesticating limited partnership is a domestic limited partnership, a statement that the plan of domestication was approved in accordance with Sections 48-2e-1151 through 48-2e-1156 or, if the domesticating limited partnership is a foreign limited partnership, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(d) the certificate of limited partnership of the domesticated limited partnership, as an attachment; and

(e) if the domesticated foreign limited partnership is not a registered foreign limited partnership, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1156(5).

(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.

(4) The certificate of limited partnership of a domesticated domestic limited partnership must satisfy the requirements of the law of this state, but the certificate does not need to be signed.

(5) A plan of domestication that is signed by a domesticating domestic limited partnership and meets all of the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-2e-1156. Effect of domestication.

(1) When a domestication becomes effective:

(a) the domesticated limited partnership is:

(i) organized under and subject to the organic law of the domesticated limited partnership; and

(ii) the same entity without interruption as the domesticating limited partnership;

(b) all property of the domesticating limited partnership continues to be vested in the domesticated limited partnership without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the domesticating limited partnership continue as debts, obligations, and other liabilities of the domesticated limited partnership;

(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited partnership remain in the domesticated limited partnership;

(e) the name of the domesticated limited partnership may be substituted for the name of the domesticating limited partnership in any pending action or proceeding;

(f) the certificate of limited partnership of the domesticated limited partnership is effective;

(g) the provisions of the partnership agreement of the domesticated limited partnership that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) the interests in the domesticating limited partnership are converted to the extent and as approved in connection with the domestication, and the partners of the domesticating limited partnership are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-2e-1108.

(2) Except as otherwise provided in the organic law or partnership agreement of the domesticating limited partnership, the domestication does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited partnership.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited partnership and becomes subject to interest holder liability with respect to a domestic limited partnership as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited partnership and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective, the following rules apply:

(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective.

(b) A person does not have interest holder liability under this part for any debt, obligation, or other liability that arise after the domestication becomes effective.

(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of a

domestic domesticating limited partnership with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign limited partnership that is the domesticated limited partnership may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 16-17-301.

(6) If the domesticating limited partnership is a registered foreign limited partnership, the registration of the foreign limited partnership is canceled when the domestication becomes effective.

(7) A domestication does not require the limited partnership to wind up its affairs and does not constitute or cause the dissolution of the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-1201. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

Enacted by Chapter 412, 2013 General Session

48-2e-1202. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 412, 2013 General Session

48-2e-1203. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 412, 2013 General Session

48-2e-1204. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Enacted by Chapter 412, 2013 General Session

48-2e-1205. Application to existing relationships.

(1) Before January 1, 2016, this chapter governs only:

(a) a limited partnership formed on or after January 1, 2014; and

(b) except as otherwise provided in Subsections (3) and (4), a limited partnership formed before January 1, 2014, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all limited partnerships.

(3) With respect to a limited partnership formed before January 1, 2014, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Subsection 48-2e-104(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2014.

(b) Sections 48-2e-601 and 48-2e-602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2014.

(c) Subsection 48-2e-603(4) does not apply and the partners have the same right and power to expel a general partner as existed immediately before January 1, 2014.

(d) Subsection 48-2e-603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before January 1, 2014.

(e) Subsection 48-2e-801(1)(c) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2014.

(4) With respect to a limited partnership that elects pursuant to Subsection (1)(b) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(a) before January 1, 2016, to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after January 1, 2016, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under Subsection (4)(a)(ii).

Enacted by Chapter 412, 2013 General Session

48-3a-101. Title.

This chapter may be cited as the "Utah Revised Uniform Limited Liability Company Act."

Enacted by Chapter 412, 2013 General Session

48-3a-102. Definitions.

As used in this chapter:

(1) "Certificate of organization" means the certificate required by Section 48-3a-201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-3a-402, which is provided by a person to a limited liability company to become a member or in the person's capacity as a member.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term:

(a) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code.

(6) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state, which would be a limited liability company, including a low-profit limited liability company, if formed under the law of this state.

(7) "Governing person" means a person, alone or in concert with others, by or under whose authority the powers of the limited liability company are exercised and under whose direction the activities and affairs of the limited liability company are managed pursuant to this chapter and the limited liability company's operating agreement. The term includes:

(a) a manager of a manager-managed limited liability company;

(b) a member of a member-managed limited liability company; and

(c) the chief executive officer of a limited liability company in which officers have been appointed, regardless of the actual designated title.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(10) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter or which becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or

Section 48-3a-1405.

(11) "Low-profit limited liability company" means a limited liability company meeting the requirements of Part 13, Low-Profit Limited Liability Companies.

(12) "Manager" means a person that under the operating agreement of a manager- managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Subsection 48-3a-407(3).

(13) "Manager-managed limited liability company" means a limited liability company that qualifies under Subsection 48-3a-407(1).

(14) "Member" means a person that:

(a) has become a member of a limited liability company under Section 48-3a-401 or was a member in a company when the company became subject to this chapter under Section 48-3a-1405; and

(b) has not dissociated under Section 48-3a-602.

(15) "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

(16) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Subsection 48-3a-112(1). The term includes the agreement as amended or restated.

(17) "Organizer" means a person that acts under Section 48-3a-201 to form a limited liability company.

(18) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(19) "Principal office" means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(20) "Professional services company" means a limited liability company organized in accordance with Part 11, Professional Services Companies.

(21) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(22) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Registered agent" means an agent of a limited liability company or foreign limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.

(24) "Registered foreign limited liability company" means a foreign limited liability company that is registered to do business in this state pursuant to a statement of registration filed by the division.

(25) "Series" means a series created in accordance with Part 12, Series Limited Liability Companies.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) "Transfer" includes:

(a) an assignment;

(b) a conveyance;

(c) a sale;

(d) a lease;

(e) an encumbrance, including a mortgage or security interest;

(f) a gift; and

(g) a transfer by operation of law.

(29) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest by whomever owned.

(30) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Subsection 48-3a-603(1)(c).

(31) "Tribal limited liability company" means a limited liability company that is:

(a) formed under the law of a tribe; and

(b) at least 51% owned or controlled by the tribe under whose law the limited liability company is formed.

(32) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Enacted by Chapter 412, 2013 General Session

48-3a-103. Knowledge -- Notice.

(1) A person knows a fact if the person:

(a) has actual knowledge of it; or

(b) is deemed to know it under Subsection (4)(a) or law other than this chapter.

(2) A person has notice of a fact if the person:

(a) has reason to know the fact from all the facts known to the person at the time in question; or

(b) is deemed to have notice of the fact under Subsection (4)(b).

(3) Subject to Subsection 48-3a-209(6), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(4) A person not a member is deemed:

(a) to know of a limitation on authority to transfer real property as provided in Subsection 48-3a-302(7); and

(b) to have notice of a limited liability company's:

(i) dissolution 90 days after a statement of dissolution under Subsection 48-3a-703(2)(b)(i) becomes effective;

(ii) termination 90 days after a statement of termination under Subsection 48-3a-703(2)(b)(vi) becomes effective;

(iii) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and

(iv) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.

Enacted by Chapter 412, 2013 General Session

48-3a-104. Nature, purpose, and duration of limited liability company.

(1) A limited liability company is an entity distinct from its member or members.

(2) A limited liability company may have any lawful purpose, regardless of whether for profit.

(3) A limited liability company has perpetual duration.

Enacted by Chapter 412, 2013 General Session

48-3a-105. Powers.

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

Enacted by Chapter 412, 2013 General Session

48-3a-106. Governing law.

The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-107. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-108. Permitted names.

(1) Except as provided in Section 48-3a-1104 or 48-3a-1302, the name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

(2) Except as otherwise provided in Subsection (4), the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in this state, must be distinguishable on the records of the division from:

(a) the name of an existing person whose formation required the filing of a record by the division;

(b) the name of a limited liability partnership;

(c) the name of a person registered to do business in this state by the filing of a record by the division;

(d) each name reserved under Section 48-3a-109 or other law of this state providing for the reservation of a name by the filing of a record by the division;

(e) each name registered under Section 48-3a-110 or other law of this state providing for the registration of a name by the filing of a record by the division; and

(f) an assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(3) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (2), the name of the consenting person may be used by the person to which the consent was given.

(4) Except as otherwise provided in Subsection (5), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.

(5) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (4). In such a case, the person need not change its name pursuant to Subsection (2).

(6) The division may not approve for filing a name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(7) The authorization to file a certificate under or to reserve or register a limited liability company name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) derogate from the common law, the principles of equity, or the statutes of

this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(c) create an exclusive right in geographic or generic terms contained within a name.

(8) The name of a limited liability company or foreign limited liability company may not contain:

(a) the words:

(i) "association";

(ii) "corporation";

(iii) "incorporated";

(iv) "partnership"; or

(v) "limited partnership";

(b) any word or abbreviation that is of like import to the words listed in Subsection (8)(a);

(c) without the written consent of the United States Olympic Committee, the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution".

Enacted by Chapter 412, 2013 General Session

48-3a-109. Reservation of name.

(1) A person may reserve the exclusive use of a name that complies with Section 48-3a-108 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.

(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer, which states the name and address of the transferee.

Enacted by Chapter 412, 2013 General Session

48-3a-110. Registration of name.

(1) A foreign limited liability company not registered to do business in this state under Part 9, Foreign Limited Liability Companies, may register its name, or an alternate name adopted pursuant to Section 48-3a-906, if the name is distinguishable on the records of the division from the names that are not available under Section 48-3a-108.

(2) To register its name or an alternate name adopted pursuant to Section

48-3a-906, a foreign limited liability company must deliver to the division for filing an application stating the foreign limited liability company's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-3a-906. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective for one year after the date of registration.

(4) A foreign limited liability company whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(5) A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

Enacted by Chapter 412, 2013 General Session

48-3a-111. Registered agent.

(1) Each limited liability company and each registered foreign limited liability company shall designate in accordance with Subsection 16-17-203(1) and maintain a registered agent in this state.

(2) A limited liability company or registered foreign limited liability company may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-3a-112. Operating agreement -- Scope, functions, and limitations.

(1) Except as otherwise provided in Subsections (3) and (4), the operating agreement governs:

(a) relations among the members as members and between the members and the limited liability company;

(b) the rights and duties under this chapter of a person in the capacity of manager;

(c) the activities and affairs of the limited liability company and the conduct of those activities and affairs; and

(d) the means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.

(3) An operating agreement may not:

(a) vary a limited liability company's capacity under Section 48-3a-105 to sue and be sued in its own name;

(b) vary the law applicable under Section 48-3a-106;

(c) vary any requirement, procedure, or other provision of this chapter pertaining to:

(i) registered agents; or

(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;

(d) vary the provisions of Section 48-3a-204;

(e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);

(f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-3a-409(4), but the operating agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;

(g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(h) unreasonably restrict the duties and rights under Section 48-3a-410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(i) vary the causes of dissolution specified in Subsections 48-3a-701(4)(a) and (5);

(j) vary the requirement to wind up the limited liability company's activities and affairs as specified in Subsections 48-3a-703(1), (2)(a), and (5);

(k) unreasonably restrict the right of a member to maintain an action under Part 8, Action By Members;

(l) vary the provisions of Section 48-3a-805, but the operating agreement may provide that the limited liability company may not have a special litigation committee;

(m) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Subsections 48-3a-1023(1)(b), 48-3a-1033(1)(b), 48-3a-1043(1)(b), or 48-3a-1053(1)(b); or

(n) except as otherwise provided in Section 48-3a-113 and Subsection 48-3a-114(2), restrict the rights under this chapter of a person other than a member or manager.

(4) Subject to Subsection (3)(g), without limiting other terms that may be included in an operating agreement, the following rules apply:

(a) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(c) If not unconscionable or against public policy, the operating agreement may:

(i) alter or eliminate the aspects of the duty of loyalty stated in Subsections 48-3a-409(2) and (9);

(ii) identify specific types or categories of activities that do not violate the duty of

loyalty;

(iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and

(iv) alter or eliminate any other fiduciary duty.

(5) The court shall decide as a matter of law whether a term of an operating agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(c). The court:

(a) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

(i) the objective of the term is unconscionable or against public policy; or

(ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session

48-3a-113. Operating agreement -- Effect on limited liability company and person becoming member -- Preformation agreement.

(1) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(3) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

Enacted by Chapter 412, 2013 General Session

48-3a-114. Operating agreement -- Effect on third parties and relationship to records effective on behalf of limited liability company.

(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under Subsection 48-3a-503(2)(b) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(a) is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(b) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(3) If a record delivered by a limited liability company to the division for filing becomes effective and contains a provision that would be ineffective under Subsection 48-3a-112(3) or (4)(c) if contained in the operating agreement, the provision is ineffective in the record.

(4) Subject to Subsection (3), if a record delivered by a limited liability company to the division for filing becomes effective and conflicts with a provision of the operating agreement:

(a) the operating agreement prevails as to members, persons dissociated as members, transferees, and managers; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Enacted by Chapter 412, 2013 General Session

48-3a-115. Delivery of record.

(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.

(2) Delivery to the division is effective only when a record is received by the division.

Enacted by Chapter 412, 2013 General Session

48-3a-116. Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

Enacted by Chapter 412, 2013 General Session

48-3a-201. Formation of limited liability company -- Certificate of organization.

(1) One or more persons may act as organizers to form a limited liability company by delivering to the division for filing a certificate of organization.

(2) A certificate of organization must state:

(a) the name of the limited liability company, which must comply with Section 48-3a-108;

(b) the street and mailing address of the limited liability company's principal office;

(c) the information required by Subsection 16-17-203(1);

(d) if the limited liability company is a low-profit limited liability company, a

statement that the limited liability company is a low-profit limited liability company;

(e) if the limited liability company is a professional services company, the information required by Section 48-3a-1103; and

(f) if the limited liability company is to have one or more series in which the liabilities of the series are to be limited as contemplated by Subsection 48-3a-1201(2), notice of the limitation on liability in accordance with Section 48-3a-1202.

(3) A certificate of organization may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-3a-112(3) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.

(4) A limited liability company is formed when the limited liability company's certificate of organization becomes effective and at least one person becomes a member.

Enacted by Chapter 412, 2013 General Session

48-3a-202. Amendment or restatement of certificate of organization.

(1) A certificate of organization may be amended or restated at any time, except that in accordance with Section 48-3a-1303, a low-profit limited liability company shall amend its certificate of organization if the limited liability company ceases to be a low-profit limited liability company.

(2) To amend its certificate of organization, a limited liability company must deliver to the division for filing an amendment stating:

(a) the name of the limited liability company;

(b) the date of filing of its initial certificate of organization; and

(c) the changes the amendment makes to the certificate as most recently amended or restated.

(3) To restate its certificate of organization, a limited liability company must deliver to the division for filing a restatement designated as such in its heading.

(4) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.

Enacted by Chapter 412, 2013 General Session

48-3a-203. Signing of records to be delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

(b) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(c) A record delivered on behalf of a dissolved limited liability company that has no member must be signed by the person winding up the limited liability company's activities and affairs under Subsection 48-3a-703(3) or a person appointed under Subsection 48-3a-703(4) to wind up the activities and affairs.

(d) A statement of denial by a person under Section 48-3a-303 must be signed by that person.

(e) Any other record delivered on behalf of a person to the division for filing must be signed by that person.

(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

Enacted by Chapter 412, 2013 General Session

48-3a-204. Signing and filing pursuant to judicial order.

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned.

(2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Enacted by Chapter 412, 2013 General Session

48-3a-205. Filing requirements.

(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:

(a) The filing of the record must be required or permitted by this chapter.

(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.

(c) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The record must be signed by a person authorized or required under this chapter to sign the record.

(e) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign

the record, but need not contain a seal, attestation, acknowledgment, or verification.

(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter, but the division may redact the information.

(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.

(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

Enacted by Chapter 412, 2013 General Session

48-3a-206. Effective time and date.

Except as otherwise provided in Section 48-3a-207 and subject to Subsection 48-3a-208(3), a record filed under this chapter is effective:

(1) on the date and at the time of its filing by the division, as provided in Section 48-3a-209;

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);

(3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

Enacted by Chapter 412, 2013 General Session

48-3a-207. Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-3a-1024, 48-3a-1034, 48-3a-1044, and 48-3a-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

Enacted by Chapter 412, 2013 General Session

48-3a-208. Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

(a) the record at the time of filing was inaccurate;

(b) the record was defectively signed; or

(c) the electronic transmission of the record to the division was defective.

(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.

(3) A statement of correction:

(a) may not state a delayed effective date;

(b) must be signed by the person correcting the filed record;

(c) must identify the filed record to be corrected;

(d) must specify the inaccuracy or defect to be corrected; and

(e) must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-3a-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Enacted by Chapter 412, 2013 General Session

48-3a-209. Duty of division to file -- Review of refusal to file -- Transmission of information by division.

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(3) If the division refuses to file a record, the division shall, not later than 15 business days after the record is delivered:

(a) return the record or notify the person that submitted the record of the refusal; and

(b) provide a brief explanation in a record of the reason for the refusal.

(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

(a) in person to the person that submitted it;

(b) to the address of the person's registered agent;

(c) to the principal office of the person; or

(d) to another address the person provides to the division for delivery.

Enacted by Chapter 412, 2013 General Session

48-3a-210. Liability for inaccurate information in filed record.

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) subject to Subsection (2), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(i) the record was delivered for filing on behalf of the limited liability company; and

(ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under Section 48-3a-202;

(B) filed a petition under Section 48-3a-204; or

(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.

(2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the division for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in Subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Enacted by Chapter 412, 2013 General Session

48-3a-211. Certificate of good standing or registration.

(1) On request of any person, the division shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company.

(2) A certificate under Subsection (1) must state:

(a) the limited liability company's name or the registered foreign limited liability company's name used in this state;

(b) in the case of a limited liability company:

(i) that a certificate of organization has been filed and has taken effect;

(ii) the date the certificate of organization became effective;

(iii) the period of the limited liability company's duration if the records of the

division reflect that its period of duration is less than perpetual; and

(iv) that:

(A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;

(B) the records of the division do not otherwise reflect that the company has been dissolved or terminated; and

(C) a proceeding is not pending under Section 48-3a-708;

(c) in the case of a registered foreign limited liability company, that it is registered to do business in this state;

(d) that all fees, taxes, interest, and penalties owed to this state by the limited liability company or foreign limited liability company and collected through the division have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the good standing or registration of the limited liability company or foreign limited liability company;

(e) that the most recent annual report required by Section 48-3a-212 has been delivered to the division for filing; and

(f) other facts reflected in the records of the division pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

Enacted by Chapter 412, 2013 General Session

48-3a-212. Annual report for division.

(1) A limited liability company or a registered foreign limited liability company shall deliver to the division for filing an annual report that states:

(a) the name of the limited liability company or registered foreign limited liability company;

(b) the information required by Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

(d) the name of at least one governing person; and

(e) in the case of a foreign limited liability company, its jurisdiction of formation and any alternate name adopted under Subsection 48-3a-906(1).

(2) Information in the annual report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.

(3) A report must be delivered to the division for each year following the calendar year in which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in this state:

(a) in the case of a limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability company's certificate of formation became effective; and

(b) in the case of a registered foreign limited liability company, the annual report

must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability company registered to do business in this state.

(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.

(5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-3a-301. No agency powers of member as member.

(1) A member is not an agent of a limited liability company solely by reason of being a member.

(2) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

Enacted by Chapter 412, 2013 General Session

48-3a-302. Statement of authority.

(1) A limited liability company may deliver to the division for filing a statement of authority. The statement:

(a) must include the name of the limited liability company and the street and mailing addresses of its registered agent;

(b) with respect to any position that exists in or with respect to the limited liability company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company; and

(c) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company.

(2) To amend or cancel a statement of authority filed by the division, a limited liability company must deliver to the division for filing an amendment or cancellation stating:

(a) the name of the limited liability company;

(b) the street and mailing addresses of the limited liability company's registered agent;

(c) the date the statement being affected became effective; and

(d) the contents of the amendment or a declaration that the statement is canceled.

(3) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(4) Subject to Subsection (3) and Subsection 48-3a-103(4), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(a) the person has knowledge to the contrary;

(b) the statement of authority has been canceled or restrictively amended under Subsection (2); or

(c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.

(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.

(7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(8) Subject to Subsection (9), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for the purposes of Subsection (7).

(9) After a statement of dissolution becomes effective, a limited liability company may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The postdissolution statement of authority operates as provided in Subsections (6) and (7).

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under Subsection (6) or (7).

(11) An effective statement of denial operates as a restrictive amendment under

this section and may be recorded by certified copy for purposes of Subsection (6)(a).

Enacted by Chapter 412, 2013 General Session

48-3a-303. Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Enacted by Chapter 412, 2013 General Session

48-3a-304. Liability of members and managers.

(1) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the limited liability company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability company solely by reason of being or acting as a member or manager. This Subsection (1) applies regardless of the dissolution of the limited liability company.

(2) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager of the limited liability company for a debt, obligation, or other liability of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-401. Becoming a member.

(1) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.

(3) After formation of a limited liability company, a person becomes a member:

(a) as provided in the operating agreement;

(b) as the result of a transaction effective under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(c) with the consent of all the members; or

(d) as provided in Subsection 48-3a-701(3).

(4) A person may become a member without:

(a) acquiring a transferable interest; or

(b) making or being obligated to make a contribution to the limited liability

company.

Enacted by Chapter 412, 2013 General Session

48-3a-402. Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

Enacted by Chapter 412, 2013 General Session

48-3a-403. Liability for contributions.

(1) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally.

(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.

(3) The obligation of a person to make a contribution may be compromised only by consent of all members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of a compromise under this Subsection (3), the creditor may enforce the obligation.

Enacted by Chapter 412, 2013 General Session

48-3a-404. Sharing of and right to distributions before dissolution.

(1) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under Section 48-3a-502 or charging order in effect under Section 48-3a-503.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited liability company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Subsection 48-3a-711(4), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the limited liability company's obligation to make a distribution is subject to offset for any amount owed to the limited liability company by the member or a person dissociated as a member on whose account the distribution is made.

Enacted by Chapter 412, 2013 General Session

48-3a-405. Limitation on distributions.

(1) A limited liability company may not make a distribution, including a distribution under Section 48-3a-711, if after the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities and affairs; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to those of persons receiving the distribution.

(2) A limited liability company may base a determination that a distribution is not prohibited under Subsection (1) on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:

(a) in the case of a distribution as defined in Subsection 48-3a-102(4)(a), as of the earlier of:

(i) the date money or other property is transferred or debt is incurred by the limited liability company; or

(ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited liability company in return for the distribution;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(4) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(5) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(6) In measuring the effect of a distribution under Section 48-3a-711, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under Section 48-3a-705, 48-3a-706, or 48-3a-707.

Enacted by Chapter 412, 2013 General Session

48-3a-406. Liability for improper distributions.

(1) Except as otherwise provided in Subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 48-3a-405 and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the limited liability company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-3a-405.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in Subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(3) A person that receives a distribution knowing that the distribution violated Section 48-3a-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3a-405.

(4) A person against which an action is commenced because the person is liable under Subsection (1) may:

(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (3) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (3).

(5) An action under this section is barred unless commenced not later than two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-3a-407. Management of limited liability company.

(1) A limited liability company is a member-managed limited liability company unless the operating agreement:

(a) expressly provides that:

(i) the limited liability company is or will be "manager-managed";

(ii) the limited liability company is or will be "managed by managers"; or

(iii) management of the limited liability company is or will be "vested in managers"; or

(b) includes words of similar import.

(2) In a member-managed limited liability company, the following rules apply:

(a) Except as otherwise provided in this chapter, the management and conduct of the limited liability company are vested in the members.

(b) Each member has equal rights in the management and conduct of the limited liability company's activities and affairs.

(c) A difference arising among members as to a matter in the ordinary course of

the activities of the limited liability company shall be decided by a majority of the members.

(d) An act outside the ordinary course of the activities and affairs of the limited liability company may be undertaken only with the affirmative vote or consent of all members.

(e) The affirmative vote or consent of all members is required to approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication.

(f) The operating agreement may be amended only with the affirmative vote or consent of all members.

(3) In a manager-managed limited liability company, the following rules apply:

(a) Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(b) Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs.

(c) The affirmative vote or consent of all members is required to:

(i) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(ii) undertake any act outside the ordinary course of the limited liability company's activities and affairs; or

(iii) amend the operating agreement.

(d) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(e) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(f) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.

(6) A limited liability company shall reimburse a member for an advance to the limited liability company beyond the amount of capital the member agreed to contribute.

(7) A payment or advance made by a member which gives rise to an obligation of the limited liability company under Subsection (6) or Subsection 48-3a-408(1) constitutes a loan to the limited liability company which accrues interest from the date of

the payment or advance.

(8) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-408. Reimbursement, indemnification, advancement, and insurance.

(1) A limited liability company shall reimburse a member of a member-managed limited liability company or the manager of a manager-managed limited liability company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the limited liability company, if the member or manager complied with Sections 48-3a-407 and 48-3a-409 in making the payment.

(2) A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-3a-405, 48-3a-407, or 48-3a-409.

(3) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the limited liability company if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

(4) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Subsection 48-3a-112(3)(g), the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

Enacted by Chapter 412, 2013 General Session

48-3a-409. Standards of conduct for members and managers.

(1) A member of a member-managed limited liability company owes to the limited liability company and, subject to Subsection 48-3a-801(1), the other members the duties of loyalty and care stated in Subsections (2) and (3).

(2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(a) to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member:

(i) in the conduct or winding up of the limited liability company's activities and affairs;

(ii) from a use by the member of the limited liability company's property; or

(iii) from the appropriation of a limited liability company opportunity;

(b) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a person having an interest adverse to the limited liability company; and

(c) to refrain from competing with the limited liability company in the conduct of the company's activities and affairs before the dissolution of the limited liability company.

(3) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the limited liability company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) A member does not violate a duty or obligation under this chapter or under the operating agreement solely because the member's conduct furthers the member's own interest.

(6) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(8) If, as permitted by Subsection (6) or (9)(f) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by Subsection (2)(b), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(9) In a manager-managed limited liability company, the following rules apply:

(a) Subsections (1), (2), (3), and (7) apply to the manager or managers and not the members.

(b) The duty stated under Subsection (2)(c) continues until winding up is completed.

(c) Subsection (4) applies to managers and members.

(d) Subsection (5) applies only to members.

(e) The power to ratify under Subsection (6) applies only to the members.

(f) Subject to Subsection (4), a member does not have any duty to the limited liability company or to any other member solely by reason of being a member.

Enacted by Chapter 412, 2013 General Session

48-3a-410. Rights of member, manager, and person dissociated as member to information.

(1) In a member-managed limited liability company, the following rules apply:

(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities, affairs, financial condition, and other circumstances, to the extent

the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The limited liability company shall furnish to each member:

(i) without demand, any information concerning the limited liability company's activities, affairs, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the limited liability company can establish that it reasonably believes the member already knows the information; and

(ii) on demand, any other information concerning the limited liability company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) The duty to furnish information under Subsection (1)(b) also applies to each member to the extent the member knows any of the information described in Subsection (1)(b).

(2) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in Subsection (1) and the duty stated in Subsection (1)(c) apply to the managers and not the members.

(b) During regular business hours and at a reasonable location specified by the limited liability company, a member may inspect and copy full information regarding the activities, affairs, financial condition, and other circumstances of the limited liability company as is just and reasonable if:

(i) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(ii) the member makes a demand in a record received by the limited liability company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the member's purpose.

(c) Not later than 10 days after receiving a demand pursuant to Subsection (2)(b)(ii), the limited liability company shall in a record inform the member that made the demand of:

(i) the information that the limited liability company will provide in response to the demand and when and where the limited liability company will provide the information; and

(ii) the limited liability company's reasons for declining, if the limited liability company declines to provide any demanded information.

(d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the limited liability company shall, without demand, provide the member with all information that is known to the limited liability company and is material to the member's decision.

(3) Subject to Subsection (9), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(a) the information pertains to the period during which the person was a member;

(b) the person seeks the information in good faith; and

(c) the person satisfies the requirements imposed on a member by Subsection (2)(b).

(4) A limited liability company shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection (2)(c).

(5) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(6) A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under Subsection (9) applies both to the agent or legal representative and the member or person dissociated as a member.

(7) Subject to Subsection (9), the rights under this section do not extend to a person as transferee.

(8) If a member dies, Section 48-3a-504 applies.

(9) In addition to any restriction or condition stated in the operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (9), the limited liability company has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-3a-501. Nature of transferable interest.

A transferable interest is personal property.

Enacted by Chapter 412, 2013 General Session

48-3a-502. Transfer of transferable interest.

(1) Subject to Subsection 48-3a-503(6), a transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and

(c) subject to Section 48-3a-504, does not entitle the transferee to:

(i) participate in the management or conduct of the limited liability company's activities and affairs; or

(ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the limited liability company's activities and affairs.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) A limited liability company need not give effect to a transferee's rights under this section until the limited liability company knows or has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in Subsection 48-3a-602(5)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(8) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 48-3a-403 and Subsection 48-3a-406(3) known to the transferee when the transferee becomes a member.

Enacted by Chapter 412, 2013 General Session

48-3a-503. Charging order.

(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in Subsection (6), a charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited liability company has been served with the charging order, requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in Subsection (6), the purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 48-3a-502.

(4) At any time before foreclosure under Subsection (3), the member or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under Subsection (3), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(a) the court shall confirm the sale;

(b) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;

(c) the purchaser thereby becomes a member; and

(d) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(7) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Enacted by Chapter 412, 2013 General Session

48-3a-504. Power of legal representative of deceased member.

If a member dies, the deceased member's legal representative may exercise:

(1) the rights of a transferee provided in Subsection 48-3a-502(3); and

(2) for the purposes of settling the estate, the rights the deceased member had under Section 48-3a-410.

Enacted by Chapter 412, 2013 General Session

48-3a-601. Power to dissociate as member -- Wrongful dissociation.

(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Subsection 48-3a-602(1).

(2) A person's dissociation as a member is wrongful only if the dissociation:

(a) is in breach of an express provision of the operating agreement; or

(b) occurs before the completion of the winding up of the limited liability company and:

(i) the person withdraws as a member by express will;

(ii) the person is expelled as a member by judicial order under Subsection 48-3a-602(6);

(iii) the person is dissociated under Subsection 48-3a-602(8); or

(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 48-3a-801, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the limited liability company or the other members.

Enacted by Chapter 412, 2013 General Session

48-3a-602. Events causing dissociation.

A person is dissociated as a member when:

(1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person's entire interest is transferred in a foreclosure sale under Subsection 48-3a-503(6);

(4) the person is expelled as a member pursuant to the operating agreement;

(5) the person is expelled as a member by the unanimous consent of the other members if:

(a) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(b) there has been a transfer of all the person's transferable interest in the limited liability company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-3a-503 which has not been foreclosed;

(c) the person is a corporation, and:

(i) the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(6) on application by the limited liability company or a member in a direct action under Section 48-3a-801, the person is expelled as a member by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited liability company's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 48-3a-409; or

(c) has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

(7) in the case of an individual:

(a) the individual dies; or

(b) in a member-managed limited liability company:

(i) a guardian or general conservator for the individual is appointed; or

(ii) a court orders that the individual has otherwise become incapable of

performing the individual's duties as a member under this chapter or the operating agreement;

(8) in a member-managed limited liability company, the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

(9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed, but not merely by reason of substitution of a successor personal representative;

(11) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(12) the limited liability company participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the limited liability company is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a member;

(13) the limited liability company participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a member;

(14) the limited liability company participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(15) the limited liability company participates in a domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a member; or

(16) the limited liability company dissolves and completes winding up.

Enacted by Chapter 412, 2013 General Session

48-3a-603. Effect of dissociation.

(1) If a person is dissociated as a member:

(a) the person's right to participate as a member in the management and conduct of the company's activities and affairs terminates;

(b) if the limited liability company is member-managed, the person's duties and obligations under Section 48-3a-409 as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) subject to Section 48-3a-504 and Part 10, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.

(2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

Enacted by Chapter 412, 2013 General Session

48-3a-701. Events causing dissolution.

A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of 90 consecutive days during which the limited liability company has no members unless:

(a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(b) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that:

(a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or

(b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement;

(5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:

(a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(6) the signing and filing of a statement of administrative dissolution by the division under Subsection 48-3a-708(3).

Enacted by Chapter 412, 2013 General Session

48-3a-702. Election to purchase in lieu of dissolution.

(1) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability company, the limited liability company may elect or, if it fails to elect, one or more members may elect to purchase the interest in the limited liability company owned by the applicant member at the fair market value of the interest, determined as provided in this section. An election pursuant to this Subsection (1) is irrevocable unless the district court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the district court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-3a-701(5) or at any later time as the district court in its discretion may allow. If the limited liability company files an election with the district court within the 90-day period, or at any later time allowed by the district court, to purchase the interest in the limited liability company owned by the applicant member, the limited liability

company shall purchase the interest in the manner provided in this section.

(3) If the limited liability company does not file an election with the district court within the time period, but an election to purchase the interest in the limited liability company owned by the applicant member is filed by one or more members within the time period, the limited liability company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the district court of an election by members to purchase the interest in the limited liability company owned by the applicant member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the applicant member. The notice shall state the name and the percentage interest in the limited liability company owned by the applicant member and the name and the percentage interest in the limited liability company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the limited liability company in accordance with this section and of the date by which any notice of intent to participate must be filed with the district court.

(4) Members who wish to participate in the purchase of the interest in the limited liability company of the applicant member must file notice of their intention to join in the purchase by electing members no later than 30 days after the effective date of the limited liability company's notice of their right to join in the election to purchase.

(5) All members who have filed with the district court an election or notice of their intention to participate in the election to purchase the interest in the limited liability company of the applicant member thereby become irrevocably obligated to participate in the purchase of the interest from the applicant member upon the terms and conditions of this section, unless the district court otherwise directs.

(6) After an election has been filed by the limited liability company or one or more members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled, nor may the applicant member sell or otherwise dispose of the applicant member's interest in the limited liability company, unless the district court determines that it would be equitable to the limited liability company and the members, other than the applicant member, to permit any discontinuance, settlement, sale, or other disposition.

(7) If, within 60 days after the earlier of the limited liability company filing of an election to purchase the interest in the limited liability company of the applicant member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the applicant member, the applicant member and electing limited liability company or members reach agreement as to the fair market value and terms of the purchase of the applicant member's interest, the district court shall enter an order directing the purchase of the applicant member's interest, upon the terms and conditions agreed to by the parties.

(8) If the parties are unable to reach an agreement as provided for in Subsection (7), upon application of any party, the district court shall stay the proceedings under Subsection 48-3a-701(5) and determine the fair market value of the applicant member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3a-701(5) was filed or as of any other date the district

court determines to be appropriate under the circumstances and based on the factors the district court determines to be appropriate.

(9) Upon determining the fair market value of the interest in the limited liability company of the applicant member, the district court shall enter an order directing the purchase of the interest in the limited liability company upon terms and conditions the district court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the district court, and an allocation of the interest in the limited liability company among members if the interest in the limited liability company is to be purchased by members.

(10) In allocating the applicant member's interest in the limited liability company among holders of different classes of members, the district court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The district court may direct that holders of a specific class or classes may not participate in the purchase. The district court may not require any electing member to purchase more of the interest in the limited liability company owned by the applicant member than the percentage interest that the purchasing member may have set forth in the purchasing member's election or notice of intent to participate filed with the district court.

(11) Interest may be allowed at the rate and from the date determined by the district court to be equitable. However, if the district court finds that the refusal of the applicant member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(12) If the district court finds that the applicant member had probable ground for relief under Subsection 48-3a-701(5), the district court may award to the applicant member reasonable fees and expenses of counsel and experts employed by the applicant member.

(13) Upon entry of an order under Subsection (7) or (9), the district court shall dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5) and the applicant member shall no longer have any rights or status as a member of the limited liability company, except the right to receive the amounts awarded to the applicant member by the district court. The award is enforceable in the same manner as any other judgment.

(14) The purchase ordered pursuant to Subsection (9) shall be made within 10 days after the date the order becomes final, unless before that time the limited liability company files with the district court a notice of its intention to file a statement of dissolution. The statement of dissolution must then be adopted and filed within 60 days after notice.

(15) Upon filing of a statement of dissolution, the limited liability company is dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant to Subsection (9) is no longer of any force or effect. However, the district court may award the applicant member reasonable fees and expenses in accordance with Subsection (12). The applicant member may continue to pursue any claims previously asserted on behalf of the limited liability company.

(16) Any payment by the limited liability company pursuant to an order under

Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is subject to the provisions of Sections 48-3a-405 and 48-3a-406.

Enacted by Chapter 412, 2013 General Session

48-3a-703. Winding up.

(1) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 48-3a-704, the limited liability company continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, a limited liability company:

(a) shall discharge the limited liability company's debts, obligations, and other liabilities, settle and close the limited liability company's activities and affairs, and marshal and distribute the assets of the limited liability company; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;

(ii) preserve the limited liability company activities, affairs, and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the limited liability company's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the limited liability company. If the person does so, the person has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).

(4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):

(a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1); and

(b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate of organization stating:

(i) that the limited liability company has no members;

(ii) the name and street and mailing addresses of the person; and

(iii) that the person has been appointed pursuant to this subsection to wind up the limited liability company.

(5) A district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities and affairs:

(a) on application of a member, if the applicant establishes good cause;

(b) on the application of a transferee, if:

(i) the company does not have any members;

(ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and

(iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or

(c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

Enacted by Chapter 412, 2013 General Session

48-3a-704. Rescinding dissolution.

(1) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the limited liability company is effective, the district court has entered an order under Subsection 48-3a-701(4) or (5) dissolving the limited liability company, or the division has dissolved the limited liability company under Section 48-3a-708.

(2) Rescinding dissolution under this section requires:

(a) the consent of each member;

(b) if a statement of dissolution applicable to the limited liability company has been filed by the division but has not become effective, the delivery to the division for filing of a statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution; and

(c) if a statement of dissolution applicable to the limited liability company is effective, the delivery to the division for filing of a statement of correction under Section 48-3a-208 stating that dissolution has been rescinded under this section.

(3) If a limited liability company rescinds its dissolution:

(a) the limited liability company resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the limited liability company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Enacted by Chapter 412, 2013 General Session

48-3a-705. Known claims against dissolved limited liability company.

(1) A dissolved limited liability company in winding up may dispose of the known claims against it by following the procedures described in this section.

(2) A limited liability company in winding up, electing to dispose of known claims pursuant to this section, may give written notice of the limited liability company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the limited liability company;

(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved limited liability company must receive the claim; and

(d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by another state statute limiting actions, a claim against the dissolved limited liability company is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved limited liability company by the deadline; or

(b) the dissolved limited liability company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved limited liability company in writing within 90 days after receipt of the claim by the dissolved limited liability company shall be considered approved.

(5) The failure of the dissolved limited liability company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-3a-706. Other claims against dissolved limited liability company.

(1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the limited liability company to present them in accordance with the notice.

(2) A notice under Subsection (1) must:

(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the county in which the office of the limited liability company's registered agent is or was last located and in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(3) If a dissolved limited liability company publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the limited liability company

not later than three years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under Section 48-3a-705;

(b) a claimant whose claim was timely sent to the limited liability company but not acted on; and

(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(4) A claim not barred under this section or Section 48-3a-705 may be enforced:

(a) against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) except as otherwise provided in Section 48-3a-707, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the limited liability company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Enacted by Chapter 412, 2013 General Session

48-3a-707. Court proceedings.

(1) A dissolved limited liability company that has published a notice under Section 48-3a-706 may file an application with district court in the county where the dissolved limited liability company's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability company, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-3a-706(3).

(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the limited liability company.

(3) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(4) A dissolved limited liability company that provides security in the amount and form ordered by the court under Subsection (1) satisfies the limited liability company's obligations with respect to claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

Enacted by Chapter 412, 2013 General Session

48-3a-708. Administrative dissolution.

(1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited liability company administratively if the limited liability company does not:

(a) pay any fee, tax, interest, or penalty required to be paid to the division not later than 60 days after it is due;

(b) deliver an annual report to the division not later than 60 days after it is due; or

(c) have a registered agent in this state for 60 consecutive days.

(2) If the division determines that one or more grounds exist for administratively dissolving a limited liability company, the division shall serve the limited liability company with notice in a record of division's determination.

(3) If a limited liability company, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the limited liability company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited liability company pursuant to Section 48-3a-209.

(4) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-3a-703, 48-3a-705, 48-3a-706, 48-3a-707, and 48-3a-711, or to apply for reinstatement under Section 48-3a-709.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

Enacted by Chapter 412, 2013 General Session

48-3a-709. Reinstatement.

(1) A limited liability company that is administratively dissolved under Section 48-3a-708 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must state:

(a) the name of the limited liability company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-3a-108;

(b) the address of the principal office of the limited liability company and the name and address of its registered agent;

(c) the effective date of the limited liability company's administrative dissolution; and

(d) that the grounds for dissolution did not exist or have been cured.

(2) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited liability company was administratively dissolved.

(3) If the division determines that an application under Subsection (1) contains the information required by Subsection (1), is satisfied that the information is correct,

and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:

(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;

(b) file the statement of reinstatement; and

(c) serve a copy of the statement of reinstatement on the limited liability company.

(4) When reinstatement under this section is effective, the following rules apply:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(b) The limited liability company may resume its activities and affairs as if the administrative dissolution had not occurred.

(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

Enacted by Chapter 412, 2013 General Session

48-3a-710. Judicial review of denial of reinstatement.

(1) If the division denies a limited liability company's application for reinstatement following administrative dissolution, the division shall serve the limited liability company with a notice in a record that explains the reasons for the denial.

(2) A limited liability company may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.

Enacted by Chapter 412, 2013 General Session

48-3a-711. Disposition of assets in winding up.

(1) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After a limited liability company complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-3a-503:

(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502.

(3) If a limited liability company does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(4) All distributions made under Subsections (2) and (3) must be paid in money.

Enacted by Chapter 412, 2013 General Session

48-3a-801. Direct action by member.

(1) Subject to Subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-802. Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under Subsection (1) would be futile.

Enacted by Chapter 412, 2013 General Session

48-3a-803. Proper plaintiff.

A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

(1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

Enacted by Chapter 412, 2013 General Session

48-3a-804. Pleading.

In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response by the managers or other members to the demand; or

(2) why the demand should be excused as futile.

Enacted by Chapter 412, 2013 General Session

48-3a-805. Special litigation committee.

(1) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability

company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This Subsection (1) does not prevent the court from:

(a) enforcing a person's right to information under Section 48-3a-410; or

(b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction upon a showing of good cause.

(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.

(3) A special litigation committee may be appointed:

(a) in a member-managed limited liability company:

(i) by the consent of a majority of the members not named as parties in the proceeding; and

(ii) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or

(b) in a manager-managed limited liability company:

(i) by a majority of the managers not named as parties in the proceeding; and

(ii) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(a) continue under the control of the plaintiff;

(b) continue under the control of the committee;

(c) be settled on terms approved by the committee; or

(d) be dismissed.

(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session

48-3a-806. Proceeds and expenses.

(1) Except as otherwise provided in Subsection (2):

(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(b) if the plaintiff receives any proceeds, the plaintiff shall remit them

immediately to the limited liability company.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

(3) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

Enacted by Chapter 412, 2013 General Session

48-3a-901. Governing law.

(1) The law of the jurisdiction of formation of a foreign limited liability company governs:

(a) the internal affairs of the foreign limited liability company; and

(b) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of the company.

(2) A foreign limited liability company is not precluded from registering to do business in this state because of any difference between the law of the jurisdiction of formation and the law of this state.

(3) Registration of a foreign limited liability company to do business in this state does not authorize the foreign limited liability company to engage in any activities or affairs or exercise any power that a limited liability company may not engage in or exercise in this state.

(4) (a) The division may permit a tribal limited liability company to apply for authority to transact business in the state in the same manner as a foreign limited liability company formed in another state.

(b) If a tribal limited liability company elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability company shall be treated in the same manner as a foreign limited liability company formed under the laws of another state.

Enacted by Chapter 412, 2013 General Session

48-3a-902. Registration to do business in this state.

(1) A foreign limited liability company may not do business in this state until it registers with the division under this chapter.

(2) A foreign limited liability company doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(3) The failure of a foreign limited liability company to register to do business in this state does not impair the validity of a contract or act of the foreign limited liability company or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the foreign limited liability company does business in this state without registering to do business in this state.

(5) Subsections 48-3a-901(1) and (2) apply even if a foreign limited liability company fails to register under this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-903. Foreign registration statement.

To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the division for filing. The statement must state:

(1) the name of the foreign limited liability company and, if the name does not comply with Section 48-3a-108, an alternate name adopted pursuant to Subsection 48-3a-906(1);

(2) that the company is a foreign limited liability company;

(3) the name of the foreign limited liability company's jurisdiction of formation;

(4) the street and mailing addresses of the foreign limited liability company's principal office and, if the law of the jurisdiction of formation requires the foreign limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the information required by Subsection 16-17-203(1).

Enacted by Chapter 412, 2013 General Session

48-3a-904. Amendment of foreign registration statement.

A registered foreign limited liability company shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the foreign limited liability company;

(2) the foreign limited liability company's jurisdiction of formation;

(3) an address required by Subsection 48-3a-903(4); or

(4) the information required by Subsection 48-3a-903(5).

Enacted by Chapter 412, 2013 General Session

48-3a-905. Activities not constituting doing business.

(1) Activities of a foreign limited liability company which do not constitute doing business in this state under this part include:

(a) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(b) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the securities of the foreign limited liability company or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;

(i) conducting an isolated transaction that is not in the course of similar transactions;

(j) owning, without more, property; and

(k) doing business in interstate commerce.

(2) A person does not do business in this state solely by being a member or manager of a foreign limited liability company that does business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-906. Noncomplying name of foreign limited liability company.

(1) A foreign limited liability company whose name does not comply with Section 48-3a-108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-3a-108. A registered foreign limited liability company that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign limited liability company shall do business in this state under:

(a) the alternate name;

(b) the foreign limited liability company's name, with the addition of its jurisdiction of formation; or

(c) an assumed or fictitious name the foreign limited liability company is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(2) If a registered foreign limited liability company changes its name to one that does not comply with Section 48-3a-108, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-3a-108.

Enacted by Chapter 412, 2013 General Session

48-3a-907. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

Enacted by Chapter 412, 2013 General Session

48-3a-908. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(1) A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:

(a) in the case of a foreign limited liability company that has completed winding up:

(i) its name and jurisdiction of formation; and

(ii) that the foreign limited liability company surrenders its registration to do business in this state; and

(b) in the case of a foreign limited liability company that has converted:

(i) the name of the converting foreign limited liability company and its jurisdiction of formation;

(ii) the type of entity to which the foreign limited liability company has converted and its jurisdiction of formation;

(iii) that the converted entity surrenders the converting foreign limited liability company's registration to do business in this state and revokes the authority of the converting foreign limited liability company's registered agent to act as registered agent in this state on behalf of the foreign limited liability company or the converted entity; and

(iv) a mailing address to which service of process may be made under Subsection (2).

(2) After a withdrawal under this section of a foreign limited liability company that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-3a-909. Transfer of registration.

(1) When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:

(a) the name of the registered foreign limited liability company before the merger or conversion;

(b) that before the merger or conversion the registration pertained to a foreign limited liability company;

(c) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted, and, if the name does not comply with Section 48-3a-108 or similar provision of law of this state governing an entity of the same type as the applicant foreign entity, an alternate name adopted pursuant to Subsection 48-3a-906(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;

(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(f) the information required under Subsection 16-17-203(1).

(2) When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in this state is transferred without interruption to the foreign entity into which the foreign company has merged or to which it has been converted.

Enacted by Chapter 412, 2013 General Session

48-3a-910. Termination of registration.

(1) The division may terminate the registration of a registered foreign limited liability company in the manner provided in Subsections (2) and (3) if the foreign limited liability company does not:

(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;

(b) deliver to the division for filing, not later than 60 days after the due date, an annual report required under Section 48-3a-212;

(c) have a registered agent as required by Section 48-3a-111; or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.

(2) The division may terminate the registration of a registered foreign limited liability company by:

(a) filing a notice of termination or noting the termination in the records of the division; and

(b) delivering a copy of the notice or the information in the notation to the foreign limited liability company's registered agent, or if the foreign limited liability company does not have a registered agent, to the foreign limited liability company's principal office.

(3) A notice must state or the information in the notation must include:

(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and

(b) the grounds for termination under Subsection (1).

(4) The authority of a registered foreign limited liability company to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited liability company cures each ground for termination stated in the notice or notation. If the foreign limited liability company cures each ground, the division shall file a record so stating.

Enacted by Chapter 412, 2013 General Session

48-3a-911. Withdrawal of registration of registered foreign limited liability company.

(1) A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:

(a) the name of the foreign limited liability company and its jurisdiction of formation;

(b) that the foreign limited liability company is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) an address to which service of process may be made under Subsection (2).

(2) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-3a-912. Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability company from doing business in this state in violation of this part.

Enacted by Chapter 412, 2013 General Session

48-3a-1001. Definitions.

In this part:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Sections 48-3a-1041 through 48-3a-1046.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-3a-1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(8) "Domesticated limited liability company" means the domesticating limited liability company as it continues in existence after a domestication.

(9) "Domesticating limited liability company" means the domestic limited liability company that approves a plan of domestication pursuant to Section 48-3a-1053 or the

foreign limited liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Sections 48-3a-1051 through 48-3a-1056.

(11) "Entity":

(a) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a limited cooperative association;

(vii) an unincorporated nonprofit association;

(viii) a statutory trust, business trust, or common-law business trust; or

(ix) any other person that has:

(A) a legal existence separate from any interest holder of that person; or

(B) the power to acquire an interest in real property in its own name; and

(b) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.

(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning, or the books and records of, the entity;

(b) vote for or consent to the election of the governors of the entity; or

(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(15) "Governor" means:

(a) a director of a business corporation;

(b) a director or trustee of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

(e) a manager of a manager-managed limited liability company;

(f) a member of a member-managed limited liability company;

(g) a director of a limited cooperative association;

(h) a manager of an unincorporated nonprofit association;

(i) a trustee of a statutory trust, business trust, or common-law business trust; or

(j) any other person under whose authority the powers of an entity are exercised

and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) "Interest" means:

(a) a share in a business corporation;

(b) a membership in a nonprofit corporation;

(c) a partnership interest in a general partnership;

(d) a partnership interest in a limited partnership;

(e) a membership interest in a limited liability company;

(f) a member's interest in a limited cooperative association;

(g) a membership in an unincorporated nonprofit association;

(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or

(i) a governance interest or distributional interest in any other type of unincorporated entity.

(17) "Interest exchange" means a transaction authorized by Sections 48-3a-1031 through 48-3a-1036.

(18) "Interest holder" means:

(a) a shareholder of a business corporation;

(b) a member of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

(e) a limited partner of a limited partnership;

(f) a member of a limited liability company;

(g) a member of a limited cooperative association;

(h) a member of an unincorporated nonprofit association;

(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(j) any other direct holder of an interest.

(19) "Interest holder liability" means:

(a) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) "Merger" means a transaction authorized by Sections 48-3a-1021 through 48-3a-1026.

(21) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(22) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(23) "Organic rules" means the public organic record and private organic rules of an entity.

(24) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(25) "Plan of conversion" means a plan under Section 48-3a-1042.

(26) "Plan of domestication" means a plan under Section 48-3a-1052.

(27) "Plan of interest exchange" means a plan under Section 48-3a-1032.

(28) "Plan of merger" means a plan under Section 48-3a-1022.

(29) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(a) the bylaws of a business corporation;

(b) the bylaws of a nonprofit corporation;

(c) the partnership agreement of a general partnership;

(d) the partnership agreement of a limited partnership;

(e) the operating agreement of a limited liability company;

(f) the bylaws of a limited cooperative association;

(g) the governing principles of an unincorporated nonprofit association; and

(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(30) "Protected agreement" means:

(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;

(b) an agreement that is binding on an entity on January 1, 2014;

(c) the organic rules of an entity in effect on January 1, 2014; or

(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.

(31) "Public organic record" means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) the articles of incorporation of a business corporation;

(b) the articles of incorporation of a nonprofit corporation;

(c) the certificate of limited partnership of a limited partnership;

(d) the certificate of organization of a limited liability company;

(e) the articles of organization of a limited cooperative association; and

(f) the certificate of trust of a statutory trust or similar record of a business trust.

(32) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.

(33) "Statement of conversion" means a statement under Section 48-3a-1045.

(34) "Statement of domestication" means a statement under Section 48-3a-1055.

(35) "Statement of interest exchange" means a statement under Section 48-3a-1035.

(36) "Statement of merger" means a statement under Section 48-3a-1025.

(37) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(38) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the

form of entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1002. Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-1003. Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1004. Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1005. Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

Enacted by Chapter 412, 2013 General Session

48-3a-1006. References to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

Enacted by Chapter 412, 2013 General Session

48-3a-1007. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

Enacted by Chapter 412, 2013 General Session

48-3a-1008. Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(a) the organic law permits the organic rules to limit the availability of appraisal rights; and

(b) the organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:

(a) the entity's organic rules; or

(b) the plan.

Enacted by Chapter 412, 2013 General Session

48-3a-1021. Merger authorized.

(1) By complying with Sections 48-3a-1021 through 48-3a-1026:

(a) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(b) two or more foreign entities may merge into a domestic limited liability company.

(2) By complying with the provisions of Sections 48-3a-1021 through 48-3a-1026 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-3a-1021 through 48-3a-1026 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1022. Plan of merger.

(1) A domestic limited liability company may become a party to a merger under Sections 48-3a-1021 through 48-3a-1026 by approving a plan of merger. The plan must be in a record and contain:

(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;

(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(f) the other terms and conditions of the merger; and

(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1023. Approval of merger.

(1) A plan of merger is not effective unless it has been approved:

(a) by a domestic merging limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(b) in a record, by each member of a domestic merging limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(i) the operating agreement of the limited liability company in a record provides for the approval of a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and

(ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(2) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1024. Amendment or abandonment of plan of merger.

(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic merging limited liability company may approve an amendment of a plan of merger:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the plan of merger;

(b) the date on which the statement of merger was delivered to the division for filing; and

(c) a statement that the merger has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1025. Statement of merger.

(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.

(2) A statement of merger must contain:

(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(b) the name, jurisdiction of formation, and type of entity of the surviving entity;

(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-3a-1021 through 48-3a-1026 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1026(5).

(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.

(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1026. Effect of merger.

(1) When a merger becomes effective:

(a) the surviving entity continues or comes into existence;

(b) each merging entity that is not the surviving entity ceases to exist;

(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(f) if the surviving entity exists before the merger:

(i) all its property continues to be vested in it without transfer, reversion, or impairment;

(ii) it remains subject to all its debts, obligations, and other liabilities; and

(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(h) if the surviving entity exists before the merger:

(i) its public organic record, if any, is amended as provided in the statement of merger; and

(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(i) if the surviving entity is created by the merger:

(i) its public organic record, if any, is effective; and

(ii) its private organic rules are effective; and

(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-3a-1008 and the merging entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.

(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.

(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.

(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.

(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section 16-17-301.

(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

Enacted by Chapter 412, 2013 General Session

48-3a-1031. Interest exchange authorized.

(1) By complying with Sections 48-3a-1031 through 48-3a-1036:

(a) a domestic limited liability company may acquire all of one or more classes

or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(b) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(2) By complying with the provisions of Sections 48-3a-1031 through 48-3a-1036 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1032. Plan of interest exchange.

(1) A domestic limited liability company may be the acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 by approving a plan of interest exchange. The plan must be in a record and contain:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) any proposed amendments to the certificate of organization or operating agreement that are, or are proposed to be, in a record of the acquired entity;

(e) the other terms and conditions of the interest exchange; and

(f) any other provision required by the law of this state or the operating agreement of the acquired entity.

(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1033. Approval of interest exchange.

(1) A plan of interest exchange is not effective unless it has been approved:

(a) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and

(b) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:

(i) the operating agreement of the limited liability company in a record provides for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and

(ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(2) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.

(3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

Enacted by Chapter 412, 2013 General Session

48-3a-1034. Amendment or abandonment of plan of interest exchange.

(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members of the domestic acquired limited liability company in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the acquired limited liability company under the plan;

(ii) the certificate of organization or operating agreement of the acquired limited liability company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired limited liability company under this chapter or the operating agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.

(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and

the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the acquired limited liability company;

(b) the date on which the statement of interest exchange was delivered to the division for filing; and

(c) a statement that the interest exchange has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1035. Statement of interest exchange.

(1) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the division for filing.

(2) A statement of interest exchange must contain:

(a) the name of the acquired limited liability company;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) a statement that the plan of interest exchange was approved by the acquired limited liability entity in accordance with Sections 48-3a-1031 through 48-3a-1036; and

(d) any amendments to the acquired limited liability company's certificate of organization approved as part of the plan of interest exchange.

(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.

(4) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this Subsection (4), references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

Enacted by Chapter 412, 2013 General Session

48-3a-1036. Effect of interest exchange.

(1) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

(a) the interests in a domestic limited liability company that are the subject of the interest exchange cease to exist or are converted or exchanged, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-3a-1008;

(b) the acquiring entity becomes the interest holder of the interests in the acquired limited liability company stated in the plan of interest exchange to be acquired by the acquiring entity;

(c) the certificate of organization of the acquired limited liability company is amended as provided in the statement of interest exchange; and

(d) the provisions of the operating agreement of the acquired limited liability company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(2) Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired limited liability company.

(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is as follows:

(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the acquired limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

Enacted by Chapter 412, 2013 General Session

48-3a-1041. Conversion authorized.

(1) By complying with Sections 48-3a-1041 through 48-3a-1046, a domestic limited liability company may become:

(a) a domestic entity that is a different type of entity; or

(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-3a-1041 through 48-3a-1046 applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1042. Plan of conversion.

(1) A domestic limited liability company may convert to a different type of entity under Sections 48-3a-1041 through 48-3a-1046 by approving a plan of conversion. The plan must be in a record and contain:

(a) the name of the converting limited liability company;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed public organic record of the converted entity if it will be a filing entity;

(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(f) the other terms and conditions of the conversion; and

(g) any other provision required by the law of this state or the operating agreement of the converting limited liability company.

(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1043. Approval of conversion.

(1) A plan of conversion is not effective unless it has been approved:

(a) by a domestic converting limited liability company by all the members of the limited liability company entitled to vote on or consent to any matter; and

(b) in a record, by each member of a domestic converting limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:

(i) the operating agreement of the limited liability company provides in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(ii) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(2) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1044. Amendment or abandonment of plan of conversion.

(1) A plan of conversion of a domestic converting limited liability company may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members of the entity in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will

change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the converting limited liability company;

(b) the date on which the statement of conversion was delivered to the division for filing; and

(c) a statement that the conversion has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1045. Statement of conversion.

(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.

(2) A statement of conversion must contain:

(a) the name, jurisdiction of formation, and type of entity of the converting entity;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-3a-1041 through 48-3a-1046 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;

(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(f) if the converted entity is a foreign entity that is not a registered foreign entity,

a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1046(5).

(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.

(4) If a converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.

(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1046. Effect of conversion.

(1) When a conversion in which the converted entity is a domestic limited liability company becomes effective:

(a) the converted entity is:

(i) organized under and subject to this chapter; and

(ii) the same entity without interruption as the converting entity;

(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) the provisions of the operating agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(g) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-3a-1008 and the converting entity's organic law.

(2) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic limited liability company with respect to which the person had interest holder liability is as follows:

(a) the conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective;

(b) the person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective; and

(c) the person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section 16-17-301.

(6) If the converting entity is a registered foreign entity, the registration to do business in this state of the converting entity is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1051. Domestication authorized.

(1) By complying with Sections 48-3a-1051 through 48-3a-1056, a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-3a-1051 through 48-3a-1056 applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication of the limited liability company as if the domestication were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1052. Plan of domestication.

(1) A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(a) the name of the domesticating limited liability company;

(b) the name and jurisdiction of formation of the domesticated limited liability company;

(c) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire

interests or securities, or any combination of the foregoing;

(d) the proposed certificate of organization of the domesticated limited liability company;

(e) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;

(f) the other terms and conditions of the domestication; and

(g) any other provision required by the law of this state or the operating agreement of the domesticating limited liability company.

(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1053. Approval of domestication.

(1) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:

(a) by all the members entitled to vote on or consent to any matter; and

(b) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:

(i) the operating agreement of the entity in a record provides for the approval of a domestication or merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and

(ii) the member voted for or consented in a record to that provision of the operating agreement or became an interest holder after the adoption of that provision.

(2) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1054. Amendment or abandonment of plan of domestication.

(1) A plan of domestication of a domestic domesticating limited liability company may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members of the limited liability company in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating limited liability company under the plan;

(ii) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication

becomes effective, except for changes that do not require approval of the members of the domesticated limited liability company under its organic law or operating agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability company may abandon the plan in the same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement of domestication becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the domesticating limited liability company;

(b) the date on which the statement of domestication was delivered to the division for filing; and

(c) a statement that the domestication has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1055. Statement of domestication.

(1) A statement of domestication must be signed by the domesticating limited liability company and delivered to the division for filing.

(2) A statement of domestication must contain:

(a) the name and jurisdiction of formation of the domesticating limited liability company;

(b) the name and jurisdiction of formation of the domesticated limited liability company;

(c) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with Sections 48-3a-1051 through 48-3a-1056 or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(d) the certificate of organization of the domesticated limited liability company, as an attachment; and

(e) if the domesticated foreign limited liability company is not a registered foreign limited liability company, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1056(5).

(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.

(4) The certificate of organization of a domesticated domestic limited liability

company must satisfy the requirements of the law of this state, but the certificate does not need to be signed.

(5) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1056. Effect of domestication.

(1) When a domestication becomes effective:

(a) the domesticated limited liability company is:

(i) organized under and subject to the organic law of the domesticated limited liability company; and

(ii) the same entity without interruption as the domesticating limited liability company;

(b) all property of the domesticating limited liability company continues to be vested in the domesticated limited liability company without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the domesticating limited liability company continue as debts, obligations, and other liabilities of the domesticated limited liability company;

(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited liability company remain in the domesticated limited liability company;

(e) the name of the domesticated limited liability company may be substituted for the name of the domesticating limited liability company in any pending action or proceeding;

(f) the certificate of organization of the domesticated limited liability company is effective;

(g) the provisions of the operating agreement of the domesticated limited liability company that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) the interests in the domesticating limited liability company are converted to the extent and as approved in connection with the domestication, and the members of the domesticating limited liability company are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-3a-1008.

(2) Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited liability company.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes

subject to interest holder liability with respect to a domestic limited liability company as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited liability company and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective:

(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective.

(b) A person does not have interest holder liability under this part for any debts, obligations, and other liabilities that arise after the domestication becomes effective.

(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of a domestic domesticating limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign limited liability company that is the domesticated limited liability company may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section 16-17-301.

(6) If the domesticating limited liability company is a registered foreign limited liability company, the registration of the foreign limited liability company is canceled when the domestication becomes effective.

(7) A domestication does not require the limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.

Enacted by Chapter 412, 2013 General Session

48-3a-1101. Definitions.

As used in this part:

(1) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or any subsequent law regulating the practice of chiropractics;

(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and

Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers and land surveyors;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

(n) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

(o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or any subsequent law regulating the practice of psychology;

(p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or

(t) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability company is organized to provide.

Enacted by Chapter 412, 2013 General Session

48-3a-1102. Application of this part.

(1) If a conflict arises between this part and another provision of this chapter, this part controls.

(2) Notwithstanding the other provisions of this part, on and after January 1, 2016:

(a) a professional services company may not designate series of transferable interests; and

(b) a limited liability company may not form a professional services company as a series of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-1103. Additional requirements for certificate of organization.

The certificate of organization of a professional services company shall:

(1) comply with Section 48-3a-201; and

(2) contain the following:

(a) a name consistent with Section 48-3a-1104;

(b) a description of the profession to be practiced through the professional services company; and

(c) notwithstanding Section 48-3a-201, the name and street address of each member or manager of the professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1104. Name limitations.

(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to complying with Sections 48-3a-108 and 48-3a-906:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by:

(i) its certificate of organization; or

(ii) Section 48-3a-1106;

(b) must conform with any rule made by the regulating board having jurisdiction over a professional service described in the professional services company's certificate of organization; and

(c) in lieu of the requirement of Subsection 48-3a-108(1), must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in:

(i) its certificate of organization; and

(ii) a report or document filed with the division.

(2) Notwithstanding Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" if that name complies with Subsection 48-3a-108(1).

(3) Sections 48-3a-108 and 48-3a-906 do not prevent the use of a name otherwise prohibited by those sections if the name is:

(a) the personal name of an individual member or individual former member of

the professional services company; or

(b) the name of an individual who was associated with a predecessor of the professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1105. Providing a professional service.

(1) Subject to Section 48-3a-1106, a professional services company may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform a service for the professional services company if a license is not otherwise required;

(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a member, manager, employee, or agent of a professional services company; or

(c) prohibit an individual licensed in another state from providing a professional service for a professional services company in this state if not prohibited by the regulating board.

Enacted by Chapter 412, 2013 General Session

48-3a-1106. Limit of one profession.

(1) A professional services company organized to provide a professional service under this part may provide only:

(a) one specific type of professional service; and

(b) services ancillary to the professional service described in Subsection (1)(a).

(2) A professional services company organized to provide a professional service under this part may not engage in a business other than to provide:

(a) the professional service that it was organized to provide; and

(b) services ancillary to the professional service described in Subsection (2)(a).

(3) Notwithstanding Subsections (1) and (2), a professional services company may:

(a) own real and personal property necessary or appropriate for providing the type of professional service it was organized to provide; and

(b) invest the professional services company's money in one or more of the following:

(i) real estate;

(ii) mortgages;

(iii) stocks;

(iv) bonds; or

(v) another type of investment.

Enacted by Chapter 412, 2013 General Session

48-3a-1107. Activity limitations.

A professional services company may not do anything that an individual licensed to practice the profession that the professional services company is organized to provide is prohibited from doing.

Enacted by Chapter 412, 2013 General Session

48-3a-1108. This part does not limit regulating board.

This part does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:

(1) is a member, manager, or employee of a professional services company; or

(2) provides the professional service or engages in the practice of the profession through a professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1109. Member or manager of a professional services company.

A professional services company organized to provide a professional service:

(1) may include a member, manager, or employee who is authorized under the laws of the jurisdiction where the member, manager, or employee resides to provide a similar professional service;

(2) may include a member who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service; and

(3) may render a professional service in this state only through a member, manager, or employee who is licensed or registered by this state to render the professional service.

Enacted by Chapter 412, 2013 General Session

48-3a-1110. Restriction on transfer by member.

(1) Except as provided in Subsections (2) and (3), a member of a professional services company may sell or transfer the member's interest in the professional services company only to:

(a) the professional services company; or

(b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional services company is organized, or who otherwise satisfies the requirements of Subsection 48-3a-1109(1) or (2).

(2) Upon the death or incapacity of a member of a professional services company, the member's interest in the professional services company may be transferred to the personal representative or estate of the deceased or incapacitated member.

(3) The person to whom an interest is transferred under Subsection (2) may continue to hold the interest for a reasonable period, but may not participate in a

decision concerning the providing of a professional service.

Enacted by Chapter 412, 2013 General Session

48-3a-1111. Purchase of interest upon death, incapacity, or disqualification of member.

(1) Subject to this part, one or more of the following may provide for the purchase of a member's interest in a professional services company upon the death, incapacity, or disqualification of the member:

(a) the certificate of organization;

(b) the operating agreement; or

(c) a private agreement.

(2) In the absence of a provision described in Subsection (1), a professional services company shall purchase the interest of a member who is deceased, incapacitated, or no longer qualified to own an interest in the professional services company within 90 days after the day on which the professional services company is notified of the death, incapacity, or disqualification.

(3) If a professional services company purchases a member's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(4) If a professional services company fails to purchase a member's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located to enforce Subsection (2):

(a) the personal representative of a deceased member;

(b) the guardian or conservator of an incapacitated member; or

(c) the disqualified member.

(5) A court in which an action is brought under Subsection (4) may:

(a) award the person bringing the action the reasonable fair market value of the interest; or

(b) within its jurisdiction, order the liquidation of the professional services company.

(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Enacted by Chapter 412, 2013 General Session

48-3a-1112. Conversion to nonprofessional company.

(1) A professional services company subject to this part converts into a limited liability company subject to this chapter, but not subject to this part on the day on which:

(a) no member of the professional services company is licensed or registered for the professional service for which the professional services company is organized; or

(b) all members entitled to vote on or consent to any matter consent not to be a

professional services company subject to this part.

(2) A professional services company converted as provided in Subsection (1) shall upon the event described in Subsection (1) operate as and be treated as a limited liability company subject to this chapter, but not subject to this part.

(3) A limited liability company resulting from a conversion under this section may reconvert to a professional services company:

(a) upon at least one member of the limited liability company being licensed or registered for the professional service for which the limited liability company is organized; and

(b) each member of the limited liability company entitled to vote on or consent to any matter consents to reconvert the limited liability company to a professional services company subject to this part.

(4) If a professional services company is converted or reconverted under this section, the professional services company shall file a certificate of amendment to the certificate of organization with the division within a reasonable time after the conversion or reconversion to reflect the changes.

Enacted by Chapter 412, 2013 General Session

48-3a-1201. Series of transferable interests.

(1) An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series.

(2) Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally or any other series, if all of the following apply:

(a) the series is established by or in accordance with the operating agreement;

(b) separate and distinct records are maintained for the series;

(c) the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, including another series;

(d) the operating agreement or the agreement establishing the series provides for the limitation on liabilities of the series; and

(e) notice of the limitation on liability of the series is set forth in the limited liability company's certificate of organization in accordance with Section 48-3a-1202.

(3) A series meeting all of the conditions of Subsection (2) shall:

(a) be treated as a separate entity to the extent set forth in the certificate of organization; and

(b) have the power and capacity to, in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued.

(4) Notwithstanding the other provisions of this section:

(a) property and assets of a series may not be transferred to the limited liability company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and

(b) a tax or other liability of the limited liability company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the limited liability company generally or to another series within the limited liability company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.

(5) Notwithstanding the other provisions of this part:

(a) a professional services company may not designate a series of transferable interests; and

(b) a limited liability company may not form a professional services company as a series of the limited liability company.

(6) Except to the extent modified by this part, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members, and transferees, shall be applicable to each series with respect to the operations of such a series.

Enacted by Chapter 412, 2013 General Session

48-3a-1202. Notice of limitation on liability of a series.

(1) Notice in a limited liability company's certificate of organization of the limitation on liabilities of a series as referenced in Subsection 48-3a-1201(2)(e) is sufficient for all purposes of this part whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.

(2) The notice of a limitation on liability of a series as referenced in Subsection 48-3a-1201(2)(e) is not required to reference a specific series.

(3) The filing by the division of the certificate of organization containing a notice of the limitation on liabilities of a series constitutes notice of the limitation on liabilities of the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1203. Agreement to be liable.

Notwithstanding Section 48-3a-304, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

Enacted by Chapter 412, 2013 General Session

48-3a-1204. Series related provisions in operating agreement.

(1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide.

(2) The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.

(3) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding.

(4) An operating agreement may provide that any member or class or group of members associated with a series does not have voting rights.

(5) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on any basis including:

(a) a per capita basis;

(b) a number basis;

(c) on the basis of a financial interest; or

(d) by class or group.

Enacted by Chapter 412, 2013 General Session

48-3a-1205. Management of a series.

(1) A series is member-managed unless the operating agreement:

(a) expressly provides that:

(i) the series is or will be "manager-managed";

(ii) the series is or will be "managed by managers"; or

(iii) management of the series is or will be "vested in managers"; or

(b) includes words of similar import.

(2) In a member-managed series, unless modified pursuant to Section 48-3a-1204, the following rules apply:

(a) The management and conduct of the series are vested in the members of the series.

(b) Each series member has equal rights in the management and conduct of the series' activities.

(c) A difference arising among series members as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the series members.

(d) An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.

(e) The operating agreement may be amended only with the consent of all members of the series.

(3) In a manager-managed series, the following rules apply:

(a) Except as otherwise expressly provided in this chapter, any matter relating to

the activities of the series is decided exclusively by the managers of the series.

(b) Each series manager has equal rights in the management and conduct of the activities of the series.

(c) A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the managers of the series.

(d) Unless modified pursuant to Section 48-3a-1204, the consent of all members of the series is required to:

(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities;

(ii) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(iii) undertake any other act outside the ordinary course of the series' activities; and

(iv) amend the operating agreement as it pertains to the series.

(e) A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.

(f) A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.

(g) A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.

(4) An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

(5) The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.

(6) This chapter does not entitle a member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1206. Series distributions.

(1) Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except

to the extent necessary to comply with any transfer effective under Section 48-3a-502 and any charging order in effect under Section 48-3a-503.

(2) A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation with respect to a series does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in Subsection 48-3a-711(3), a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. However, the series' obligation to make a distribution is subject to offset for any amounts owed to the series by the member or a person dissociated as a member on whose account the distribution is made.

(5) A series may not make a distribution if after the distribution:

(a) the series would not be able to pay its debts as they become due in the ordinary course of the series' activities; or

(b) the series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(6) A series may base a determination that a distribution is not prohibited under Subsection (5) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(7) Except as otherwise provided in Subsection (9), the effect of a distribution under Subsection (5) is measured:

(a) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series; or

(b) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs within 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(8) A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.

(9) A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of Subsection (5) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on

the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(10) Except as otherwise provided in Subsection (11), if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.

(11) To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in Subsection (10) applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.

(12) A person that receives a distribution from a series knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.

(13) A person against which an action is commenced because the person is liable under Subsection (10) may:

(a) implead any other person that is liable under Subsection (10) and seek to compel contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (12) and seek to compel contribution from the person in the amount the person received in violation of Subsection (12).

(14) An action under this section is barred if not commenced within two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-3a-1207. Events causing dissociation from a series.

(1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise a right or power of a member with respect to the series upon the assignment of all of the member's transferable interest in the limited liability company with respect to the series.

(2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:

(a) cause the member to cease to be associated with another series;

(b) terminate the continued membership of a member in the limited liability company; or

(c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1208. Dissolution of a series.

(1) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company.

(2) The dissolution of a series does not affect the limitation on liabilities of the series under Section 48-3a-1201.

(3) A series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-3a-701 or upon the occurrence of any of the events described in Section 48-3a-701, as applied to the series.

(4) Notwithstanding Section 48-3a-703, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a dissolved series:

(a) a manager associated with a series who has not wrongfully caused the dissolution of the series;

(b) if there is no manager that satisfies the requirements of Subsection (4)(a), the members associated with the series who have not wrongfully caused the dissolution of the series or a person approved by the members associated with the series who have not wrongfully caused the dissolution of the series; or

(c) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who have not wrongfully caused the dissolution of the series, and either:

(i) own more than 50% of the transferable interests of the series owned by members associated with the series who have not wrongfully caused the dissolution of the series; or

(ii) own more than 50% of the transferable interests of each class or group associated with the series owned by members associated with the series who have not wrongfully caused the dissolution of the series.

(5) The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under Section 48-3a-703 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in Section 48-3a-711 for a limited liability company and distribute the assets of the series as provided in Section 48-3a-711 for a limited liability company. An action taken pursuant to this Subsection (5) may not affect the liability of a member and may not impose liability on a liquidating trustee.

Enacted by Chapter 412, 2013 General Session

48-3a-1209. Foreign limited liability company -- Series.

A foreign limited liability company that is registered to do business in this state that is governed by an operating agreement that establishes or provides for the establishment of a series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the foreign registration statement filed by the division. In

addition, the foreign limited liability company shall state on the foreign registration statement whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series. Notice in a foreign limited liability company's foreign registration statement of the limitation on liability of a series as referenced in this section shall have the same effect found in Section 48-3a-1202 as a notice of limitation on liability of a series set forth in a limited liability company's certificate of organization.

Enacted by Chapter 412, 2013 General Session

48-3a-1301. Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

Enacted by Chapter 412, 2013 General Session

48-3a-1302. Requirements.

(1) To be a low-profit limited liability company, a limited liability company shall:

(a) contain in its name the abbreviation "L3C" or "l3c";

(b) state in its certificate of organization that it is a low-profit limited liability company;

(c) organize under this chapter; and

(d) be organized for a business purpose that satisfies, and at all times operates to satisfy each of the requirements under Subsection (2).

(2) A low-profit limited liability company:

(a) shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;

(b) shall demonstrate that it would not be formed but for the limited liability company's relationship to the accomplishment of a charitable or educational purpose;

(c) subject to Subsection (3), may not have as a significant purpose the production of income or the appreciation of property; and

(d) may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

(3) Notwithstanding Subsection (2), if a low-profit limited liability company produces significant income or capital appreciation, in the absence of other factors, the fact that the low-profit limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

Enacted by Chapter 412, 2013 General Session

48-3a-1303. Ceasing to be a low-profit limited liability company.

(1) If a limited liability company that is a low-profit limited liability company at its formation at any time ceases to meet a requirement to be a low-profit limited liability

company under Section 48-3a-1302, the limited liability company:

(a) ceases to be a low-profit limited liability company on the day on which the limited liability company no longer meets the requirement; and

(b) if it continues to meet the requirements of this chapter to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.

(2) A low-profit limited liability company's failure to meet a requirement of Section 48-3a-1302 may be:

(a) voluntary, in order to convert to a limited liability company that is not a low-profit limited liability company; or

(b) involuntary.

(3) If a low-profit limited liability company ceases to be a low-profit limited liability company in accordance with this section, the limited liability company shall:

(a) change its name to conform with Section 48-3a-108; and

(b) amend its certificate of organization in accordance with Section 48-3a-202.

Enacted by Chapter 412, 2013 General Session

48-3a-1304. Merger, interest exchange, conversion, or domestication of a low-profit limited liability company.

A low-profit limited liability company may engage in a merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, to the same extent as a limited liability company that is not a low-profit limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-1401. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

Enacted by Chapter 412, 2013 General Session

48-3a-1402. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 412, 2013 General Session

48-3a-1403. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or

supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 412, 2013 General Session

48-3a-1404. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Enacted by Chapter 412, 2013 General Session

48-3a-1405. Application to existing relationships.

(1) Before January 1, 2016, this chapter governs only:

(a) a limited liability company formed on or after January 1, 2014; and

(b) except as otherwise provided in Subsection (3), a limited liability company formed before January 1, 2014, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all limited liability companies.

(3) For the purposes of applying this chapter to a limited liability company formed before January 1, 2014:

(a) the limited liability company's articles of organization are deemed to be the limited liability company's certificate of organization;

(b) for the purposes of applying Subsection 48-3a-102(15) and subject to Subsection 48-3a-114(4), language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement; and

(c) the limited liability company has perpetual duration unless otherwise stated in the limited liability company's articles of organization.

Enacted by Chapter 412, 2013 General Session